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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1953

## No. 128

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, ET AL., APPELLANTS,

*vs.*

STATE MILK COMMISSION

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

FILED JUNE 16, 1953

Probable jurisdiction noted October 12, 1953

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[fol. 1] [File endorsement omitted]

## IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, VIRGINIA

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate; and FLORENCE E. CANNON, Chairman, F. FREELAND CHEW, ALFRED E. FRISBIE, ROBERT W. COX, DANIEL A. DUGAN, Members of the County Board, Petitioners,

vs.

STATE MILK COMMISSION, Defendant

PETITION FOR APPEAL—filed February 23, 1951

To the Honorable Judge of the Circuit Court:

Your petitioners represent unto the Court as follows:

1. This petition for appeal is made pursuant to Section 3-371 of the 1950 Code of Virginia, and involves a statute enacted and amended by the General Assembly of the Commonwealth of Virginia, known as the Milk and Cream Act, as set forth in sections 3-346 to 3-383, inclusive, 1950 Code of Virginia.

2. The County of Arlington, Virginia, is a purchaser of milk, and the above-named petitioners, members of the Arlington County Board, are residents of Arlington County, and they are purchasers and consumers of milk and cream at retail delivered to them in said county, and said members of the Arlington County Board are representative of numerous other purchasers and consumers of milk and cream residing in said county; and in their capacity on said County Board said members are charged with the duty of taking such measures as they may deem expedient to secure and promote the health, safety, and general welfare of the inhabitants of said county.

3. By an order, rule or regulation designated as *Arlington-Alexandria Market—Order No. 4*, made, adopted, and posted by the State Milk Commission of the Commonwealth of Virginia on January 17, 1951, which by its terms became effective on 12:01 A.M., January 21, 1951, said Commission increased the retail and wholesale prices of milk and



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cream in Arlington County; and this petition is filed within forty (40) days from the time said order, rule, or [fol. 2] regulation became effective. Petitioners and numerous consumers of milk and cream in said county are aggrieved by said order and the rules and regulations of said Commission for the supervision and control of the Arlington-Alexandria Market, as stated herein.

4. The aforesaid order was issued after notice and hearing by the State Milk Commission which did not give actual notice of or bring in issue the matter of increasing milk and cream prices in the Arlington-Alexandria Market, which includes Arlington County; and no findings of fact or decision were made or published by said Commission with respect to such order, rules and regulations, so far as known to petitioners.

5. A major proportion of the milk and cream purchased and consumed by residents in Arlington County, including milk and cream consumed by said petitioners and their families, is processed and bottled in the District of Columbia by distributors which transport such milk and cream in motor vehicles from said District and deliver such milk directly to the residences of retail consumers in Arlington County, Virginia, in the original packages, which movements and sales of milk and cream were and are in interstate commerce; and the State Milk Commission presumed to fix prices of milk and cream so moving in interstate commerce, and by said Order No. 4 such prices were increased by the Commission.

6. The increased prices fixed by the aforesaid order apply to milk or cream produced within a restricted geographical area limited by the rules and regulations of the State Milk Commission for the supervision and control of the Arlington-Alexandria Market; and with certain exceptions the State Milk Commission has restricted and limited the sources of supply of milk to prescribed areas and has prohibited shipments of milk from numerous other points in other States in interstate commerce; and such restrictions unduly limit the sources of supply of milk to consumers and purchasers in Arlington County, particularly from points outside the State of Virginia.

7. The above-described regulation by the State Milk Com-

mission is in a field occupied by Act of Congress of the United States (7 U.S.C. §601 et seq., particularly §608 c), according to which the Secretary of Agriculture is and has [fol. 3] been authorized to regulate the handling of milk and "minimum prices to be paid to producers or associations of producers" of milk "as is in the current of interstate or foreign commerce." Such pricing and other regulations were applied to the area surrounding and including Arlington County by order of the Secretary of Agriculture, effective November 3, 1945, a certified printed copy of which is attached hereto as Exhibit A hereof. By further order of the Secretary of Agriculture, effective March 31, 1947, a certified photostatic copy of which is attached hereto as Exhibit B hereof, said regulation was terminated by the producers of milk as the Federal statute permits them to do.

8. The above-mentioned Milk and Cream Act of Virginia contains the following saving clause as set forth in section 3-381 of the 1950 Code of Virginia, to-wit:

> "No provision of this article shall apply or be construed to apply to foreign or interstate commerce, except in so far as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto."

9. Your petitioners object to the said orders, rules and regulations of the said State Milk Commission in this, to-wit:

> (a) The said State Milk Commission has no authority or jurisdiction to regulate the prices of milk or cream moving in interstate commerce to or from a point in Virginia from or to a point outside Virginia.
>
> (b) The said State Milk Commission has no authority or jurisdiction to regulate the retail prices of milk or cream which have been processed and bottled in the distributors' plants in the District of Columbia and transported by trucks of any such distributor from the District of Columbia and delivered in the original package or bottle by such distributor directly to the residence doors of consumer-purchasers at retail in Arlington County, State of Virginia.

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(c) The said State Milk Commission has no authority or jurisdiction to regulate interstate commerce in milk or cream in the Arlington-Alexandria Market because of the Act of Congress mentioned in paragraph seven of this petition, particularly while there is absence of con- [fol. 4] current exercise of jurisdiction by the Secretary of Agriculture over the area included within the Arlington-*Arlington* Market as provided by such Act of Congress.

(d) The said State Milk Commission has no authority or jurisdiction to regulate and obstruct the supply of milk or cream moving to Arlington County, Virginia, from sources outside the State of Virginia in interstate commerce.

10. Your petitioners further object to the procedure of the State Milk Commission in that there was a denial to your petitioners, and all other consumers of milk and cream in the Arlington-Alexandria Market, of a decision reached after fair and reasonable notice of proposed increases of prices of milk and cream and hearing on such proposals, and such action by the State Milk Commission was unreasonable and capricious.

Wherefore, your petitioners pray, for the reasons stated herein, and for other reasons which may be assigned at the hearing on appeal, that the Court grant relief to petitioners and adjudge, declare, decree, and order, as follows, to-wit:

(1) That said Order No. 4 and the Rules and Regulations of the State Milk Commission for the Supervision and Control of the Arlington-Alexandria Market are null and void, and beyond the authority and jurisdiction of the said Commission, in so far as they relate to interstate commerce in milk or cream as specified in paragraph nine hereof.

(2) That by appropriate order the Court remand the matters and things involved in this proceeding to the State Milk Commission with directions to recon-

sider the order, rules and regulations applying to the Arlington-Alexandria Market, as follows, to-wit:

(a) Issue another notice and hold a further hearing upon the question of increasing prices of milk or cream over those in effect prior to said Order No. 4, effective January 21, 1951, and for the taking of such further testimony and evidence as may be deemed material and relevant at such further hearing.

[fol. 5] (b) Revise and change said order and the Commission's rules and regulations so as to clearly state that the prescribed prices and other rules and regulations do not apply to interstate commerce beyond the authority and jurisdiction of said Commission, particularly as specified in paragraph nine hereof.

(c) Resubmit to this Court the revised, changed, or amended rules and regulations for such further review as may be necessary for this Court to determine whether the State Milk Commission has acted within its authority and jurisdiction, and in conformity with the directions of this Court.

And your petitioners will ever pray, etc.

The County Board of Arlington County, Virginia, By its members: (S.) Florence E. Cannon, Chairman, F. Freeland Chew, Member, Alfred E. Frisbie, Member, Robert W. Cox, Member, Daniel A. Dugan, Member, Malcolm D. Miller, Attorney for Arlington County Board, Munsey Building, Washington 4, D. C., or 1838 N. Quintana Street, Arlington, Virginia.

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[fol. 6] Certificate of service (omitted in printing).

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[fol. 7] Proof of Service of Sheriff (omitted in printing).

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( Here follows Photolithograph, side folio 8)

EXHIBIT "A"
H F S with Petition - Feb. 23, 1951

6A

# United States of America

H F S
With Petition
FEB. 23, 1951

Department of Agriculture

...uary 1951. , 19

...suant to Title 28, United States Code, Section 1733, I hereby

...t there is now in this Department the following-described document:

... Order, as Amended, Regulating the Handling of Milk in the ... Washington, D. C., Marketing Area - issued by the Secretary of Agriculture on October 26, 1946, effective November 3, 1946

...at a ... correct, and compared copy thereof is attached hereto.

**By direction of the Secretary of Agriculture, and in witness whereof,** the said copy is hereby authenticated, the seal of the Department of Agriculture is affixed hereto, and I have signed my name hereto on the day and year first above written.

Clarence H. Girard
Associate SOLICITOR

[fol. 9] **Order No. 45, as Amended**

***Effective November 3, 1945***

**United States Department of Agriculture**
**Production and Marketing Administration**

**T. 7 Ch. IX, Code of Fed. Regs.**

**Marketing Orders—Part 945**

**Order, as Amended, Regulating the Handling of Milk in the Washington, D. C., Marketing Area**

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(48 Stat. 31, 670, 675; 49 Stat. 750; 50 Stat. 246; 7 U. S. C. 1940 ed., 601 *et seq.*)

§ 945.1 Findings and determinations. (a) Findings. Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure covering the formulation of marketing agreements and orders (7 CFR, Cum. Supp.,

900.1 *et seq.;* 10 F. R. 11791), a public hearing was held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Washington, D. C., marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is hereby found that:

(1) The order regulating the handling of milk in the said marketing area, as amended and as hereby amended, and all of the terms and conditions of said order, as amended and as hereby amended, will tend to effectuate the declared policy of the act;

(2) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to §§ 2 and 8 (c) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supplies of and demand for such milk, and the minimum prices specified in the said order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

[fol. 10] (3) The said order regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in the said tentatively approved marketing agreement upon which a hearing has been held.

(b) Determinations. It is hereby determined that handlers of at least 50 percent of the volume of milk which is marketed within the said marketing area refused or failed to sign the tentatively approved marketing agreement regulating the handling of milk in the said marketing area; and it is hereby determined that:

(1) The refusal or failure of such handlers to sign such tentatively approved marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order, as amended, is the only practical means pursuant to the declared policy of the act to advance the interests of the producers of milk which is produced for sale in the said marketing area; and

(3) The issuance of this order is approved or favored by at least three-fourths of the producers who participated in a referendum on the question of the approval of this order, as amended, and who during the determined representative period, were engaged in the production of milk for sale in the said marketing area.

§ 945.2 Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Washington, D. C., marketing area shall be in conformity to and in compliance with the terms and conditions of this order, as amended.

§ 945.3 Definitions. The following terms shall have the following meanings:

(a) "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

(b) "Secretary" means the Secretary of Agriculture or any officer or employee of the United States who is, or who may hereafter be, authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

(c) "Washington marketing area," hereinafter referred to as the "marketing area," means (1), the territory within the boundary lines of the District of Columbia and (2), that territory in the State of Maryland included between the District of Columbia line and the following boundaries: Beginning at the junction of the southeastern boundary of the District of Columbia line and Route 224, thence south on Route 224 to Oxen Hill, thence east on St. Barnaby Road to Gordon's Corner, thence northeast on Suitland-Silver Hill Road continuing Suitland to the Junction of Route 4, thence northwest on Route 4 to Hillside, thence north on Crystal Spring Road continuing through Capitol Heights to Sixty-first Street, thence north on Sixty-first Street to the District of Columbia line, thence northeasterly and thence northwesterly along said District line to Kenilworth Avenue, thence north on Kenilworth Avenue to Defense Highway, thence east on Defense Highway, thence north on Edmonston Road to Greenbelt, and around the outside limits of Greenbelt, thence returning on Edmonston Road to Branchville Road, thence west on

[fol. 11] Branchville Road to Baltimore-Washington Boulevard, thence south on the Baltimore-Washington Boulevard to Metzerott Road, thence west on Metzerott Road to Riggs Valley Road, thence to County Road, thence west to Blair Road, thence north to Piney Branch Road, continuing north on Piney Branch Road to White Oak at intersection of Colesville Road, thence continuing north on Colesville Road to Colesville, thence west on Glenmont Road to Brookville Road, thence south on Brookville Road to Wheaton, thence on Lincoln Avenue to Kensington, thence west on Knowles Avenue and continuing west on Strathmore Avenue to Rockville Pike, thence south on Rockville Pike to Grosvenor Lane, thence west on Grosvenor Lane to Old Georgetown Road, thence north on Old Georgetown Road to Bellsmill Road, thence west on Bellsmill Road to the Seven Locks Road, thence south on Seven Locks Road to Bradley Road, thence west on Bradley Road continuing to Conduit Road, thence southeasterly on Conduit Road to the District of Columbia line, and (3), that territory in the Commonwealth of Virginia included within the following boundaries:

Beginning at the junction of the westerly boundary of the Arlington County line and the Potomac River, thence southwesterly along the said county line to its junction with Road 689, thence westerly on Road 689 to its junction with Road 695, thence southerly along Road 695 crossing Road 694 and Highway 7 to the junction of Road 695 and Road 650, thence southerly on Road 650 crossing Highway 211 and Highway 50 to its junction with Road 709, thence southeasterly on Road 709 to its junction with Road 710, thence southerly on Road 710 to is junction with Highway 236; thence from this point in a straight line southerly to the junction of Roads 617 and 620, thence southerly on Road 617 to its junction with Road 636, thence southerly along Road 636 to Highway 9, thence in a straight line southwesterly from the junction of Road 636 and Highway 9 to the junction of Roads 641 and 642 in Prince William County, thence southeasterly along Road 642 to Road 640, thence northeasterly along Road 640 to Road 639, thence easterly along Road 639 to Highway 9; thence southeasterly along Highway 9 to Highway 1, south of Woodbridge, thence cross Highway 1 and continue southeasterly

along Road 637 to Dawson Beach, thence in a straight line due east to the Potomac River, thence up said river to its junction with the western boundary of the Arlington County line.

(d) "Person" means any individual, partnership, corporation, association, or any other business unit.

(e) "Producer" means any person, irrespective of whether such person is also a handler, who produces, under a dairy farm inspection permit issued by the applicable health department as the result of a farm inspection and other applicable health department regulations, milk which is delivered to a plant approved by the applicable health department for the handling of milk disposed of for fluid consumption as milk in the marketing area and from which plant milk, skim milk, milk drinks, or cream is disposed of for fluid consumption in the marketing area.

(f) "Handler" means any person, irrespective of whether such person is also a producer or a cooperative associ-
[fol. 12] ation of producers, who engages in such handling of milk, skim milk, or cream for fluid consumption in the marketing area as is in the current of interstate commerce, or which directly burdens, obstructs, or affects such commerce in milk and its products: *Provided,* That this definition shall not include producers or cooperative associations of producers with respect to milk or cream not handled through their own receiving or bottling plant.

(g) "Market administrator" means the person designated pursuant to § 945.4 as the agency for the administration hereof.

(h) "Cooperative association" means any cooperative association of producers which the Secretary determines (1) to have its entire activities under the control of its members and (2) to have and to exercise full authority in the sale of milk of its members.

(i) "Delivery period" means the current marketing period from the first to the last day of each month, both inclusive.

(j) "Producer milk plant" means any milk plant approved by the applicable health department for the handling of milk disposed of for fluid consumption as milk in the marketing area and currently used for any or all of the

handling functions of receiving, weighing (or measuring), sampling, cooling, pasteurizing, bottling, or other preparation of milk delivered by producers, as defined in (e) of this section, for fluid sales or disposition as milk, skim milk, milk drinks, or cream for fluid consumption in the marketing area.

(k) "Emergency milk" means all milk except producer milk, and all skim milk, cream, cottage cheese, condensed skim milk, whole milk powder, and skim milk powder received at a producer milk plant except such products received from another producer milk plant.

(l) "Producer plant test" means the weighted average butterfat test of all producer milk received at a "producer milk plant" during a delivery period as determined by the market administrator.

(m) "Producer milk" means all milk received either directly or through another producer milk plant by a handler and produced by a producer as defined in (e) of this section.

§ 945.4 Market administrator. (a) Designation. The agency for the administration hereof shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

(b) Powers. The market administrator shall:

(1) Administer the terms and provisions hereof;

(2) Report to the Secretary complaints of violations of the provisions hereof; and

(3) Make rules and regulations to effectuate the terms and provisions hereof.

(c) Duties. The market administrator shall:

(1) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

[fol. 13] Pay, out of the funds provided by § 945.11, the cost of his bond, his own compensation, and all other ex-

penses necessarily incurred in the maintenance and functioning of his office;

(3) Keep such books and records as will clearly reflect the transactions provided for herein and surrender the same to his successor or to such other person as the Secretary may designate;

(4) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 2 days after the date upon which he is required to perform such acts, has not (i) made reports pursuant to § 945.5, or (ii) made payments pursuant to § 945.10;

(5) Promptly verify the information contained in the reports submitted by handlers; and

(6) Check the weight and butterfat test of milk received from producers by each handler each month and report the results of the butterfat tests to producers or to their cooperative association.

The market administrator may designate an independent agency to check the weight and butterfat test of such receipts by handlers.

§ 945.5 Reports of handlers. (a) Submission of Reports. Each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(1) On or before the 10th day after the end of each delivery period: (i) the receipts of milk at each producer plant from producers, including milk produced by such handler and the weighted average test thereof; (ii) the receipts and butterfat content of milk, skim milk, cream, and milk products at each producer milk plant for the account of a handler or a cooperative association, from each producer milk plant and each emergency milk source; (iii) the utilization of all milk, skim milk, cream, and milk products received and the butterfat content of each use or product thereof; (iv) the receipts at each producer milk plant from new producers and the average test thereof; (v) the name and address of each new producer; (vi) the names of handlers from whom or to whom milk, skim milk, cream, and milk products was received or delivered; and (vii) the

address of each emergency milk source from which milk, skim milk, cream, and milk products was received at a producer milk plant.

(2) Within 10 days after the market administrator's request with respect to any producer for whom such information is not in the files of the market administrator and with respect to a period or periods of time designated by the market administrator: (i) the name and address of such producer; (ii) the total pounds of milk delivered and the average butterfat test thereof; (iii) the farm scores and cattle scores recorded by the respective health departments requiring permits to sell milk to handlers in the marketing area; and (iv) the number of days upon which deliveries were made.

(3) On or before the 19th day after the end of each delivery period, at the request of the market administrator, his producer pay roll which shall show for each producer: (i) the total delivery of milk with the average butterfat test thereof; (ii) the premium rate paid; (iii) the net amount of payment made pursuant to § 945.10; and (iv) [fol. 14] the deductions and charges made by the handler with authorizations therefor.

(b) Verification of Reports. Each handler shall provide the market administrator or his agent with reasonable access to those records and facilities which are necessary for:

(1) The verification of the information contained in the reports submitted in accordance with this section;

(2) The verification of the payments required by § 945.10;

(3) The checking of the weighing and sampling of milk, skim milk, cream, and milk products received by such handlers; and

(4) Determining the utilization of milk, skim milk, cream, and milk products by the handler.

§ 945.6 Classification of milk. (a) Milk to be Classified. All milk, skim milk, cream, and milk products received by each handler in his producer milk plant shall be classified by the market administrator in the classes set forth in (b) of this section.

(b) Classes of Utilization. Except as provided in (c) of this section, the classes of utilization shall be as follows:

(1) Class I. All milk, skim milk, cream, and milk products which are disposed of for fluid consumption as milk, skim milk, milk drinks, and buttermilk, and all milk not accounted for in Classes II and III.

(2) Class II. All milk, skim milk, cream, and milk products which are used in the manufacture of, or disposed of in, cottage cheese, pot cheese, or baker's cheese, and cream for fluid consumption.

(3) Class III. All milk, skim milk, cream, and milk products used in a producer milk plant as, or disposed of to a plant engaged in the wholesale manufacture of, ice cream and similar frozen dairy products and mixes therefor, butter, roller or spray nonfat dry milk solids, condensed milk, condensed skim milk, or cheese other than cottage, pot, or baker's cheese, and used as such.

(c) Transfers of Milk, Skim Milk, and Cream. (1) Milk and skim milk disposed of by a handler to a plant, other than a producer milk plant, outside the area from which milk was disposed of as Class I milk for fluid use outside the marketing area shall be classified as Class I, not to exceed the quantity of Class I milk at such plant, and cream disposed of by a handler to a plant outside the area from which milk or cream was disposed of for fluid use outside the marketing area shall be classified as Class II, not to exceed the quantity of Class II milk at such plant.

(2) Milk, skim milk, and cream transferred from one handler's producer milk plant to another handler's producer milk plant may be classified according to an agreement for use by such handlers: *Provided*, That an equivalent quantity of milk not otherwise classified was used by the receiving handler in the class use agreed upon, and in the absence of an agreement shall be classified in Class I: *And provided further*, If either or both handlers have purchased emergency milk, the market administrator shall classify such transferred milk, skim milk, and cream so as to return to the producers at both plants the highest class utilization according to the rules for allocation of producer milk and emergency milk in § 945.6 (f) and (g).

[fol. 15] (d) Computation of Milk in Each Class. For each delivery period the market administrator shall correct for mathematical errors the report submitted by each handler and compute from the corrected report the amount of Class I milk, Class II milk, and Class III milk, as follows:

(1) Determine the total pounds of milk to be accounted for as follows: add into one sum (i) the total pounds of milk received from producer's and handler's own farm production and (ii) the total pounds of milk, skim milk, and cream received, and the total pounds of milk, skim milk, and cream received in the form of other milk products (*a*) from emergency milk sources and (*b*) from other producer milk plants.

(2) Determine the total pounds of butterfat to be accounted for as follows: (i) multiply by its average butterfat test the weight of the milk received from producer's and handler's own farm production, and (ii) multiply by its weighted average butterfat test the weight of the milk, skim milk, cream, and milk products received (*a*) from emergency milk sources, and (*b*) from other producer milk plants, and (iii) add the resulting amounts into one sum.

(3) Determine the total pounds of Class I milk as follows: (i) convert to pounds the quantity of milk, skim milk, buttermilk, and milk drinks disposed of for fluid consumption and (ii) add to this amount any plus amount computed as follows: (*a*) compute the pounds of butterfat contained in the pounds of Class I milk by multiplying the weight of each product by its average butterfat test and adding together the resulting amounts, (*b*) add to this amount the pounds of butterfat in Class II milk and Class III milk, (*c*) subtract the total pounds of butterfat thus computed from the total pounds of butterfat received computed pursuant to (2) of this paragraph, and (*d*) divide the difference in butterfat pounds by the producer plant test.

(4) Determine the total pounds of Class II milk as follows: (i) multiply the weight of the cream disposed of for fluid consumption and the cottage, pot, or baker's cheese each by its average butterfat test, add together the re-

sulting amounts, and divide by the producer plant test; (ii) add to this amount any amount by which the total product pounds of cream disposed of for consumption as fluid cream and the pounds of cream and skim milk disposed of in cottage, pot, or baker's cheese exceeds the amount computed pursuant to (i) of this subparagraph; and (iii) subtract from the amount computed pursuant to (ii) of this subparagraph any amount by which that amount when added to the amount of Class I milk determined pursuant to (3) of this paragraph exceeds the total pounds of milk received computed pursuant to (1) of this paragraph.

(5) Determine the total pounds of Class III milk as follows: (i) multiply the weight of each of the products of Class III milk by its average butterfat test, add together the resulting amounts, and divide by the producer plant test; (ii) add to this amount any amount by which the total product pounds of milk, skim milk, and cream disposed of in Class III products exceeds the amount computed pursuant to (i) of this subparagraph; and (iii) subtract from the amount computed pursuant to (ii) any amount by which that amount when added to the amount of Class I [fol. 16] milk determined pursuant to (3) of this paragraph and Class II milk determined pursuant to (4) of this paragraph exceeds the total pounds of milk received computed pursuant to (1) of this paragraph.

(e) Allocation of Producer Milk. (1) Producer milk received by a handler shall first be allocated to Class I but not to exceed the Class I pounds as determined, pursuant to (d) (3) of this section, less the pounds of emergency milk allocated to Class I pursuant to the proviso in (f) of this section.

(2) Producer milk received by a handler in excess of such Class I utilization shall be allocated to Class II but not to exceed the Class II pounds as determined pursuant to (d) (4) of this section.

(3) Producer milk received by a handler in excess of Class I and Class II utilization shall be Class III.

(f) Allocation of Emergency Milk. Emergency milk received at a producer milk plant shall be allocated to Class

III milk, except that emergency milk may be allocated to Class II milk to the extent that Class II use exceeds the amount of all producer milk less the amount of producer milk classified as Class I milk, and emergency milk may be allocated to Class I milk only to the extent that the total amount of Class I milk exceeds the total amount of producer milk received: *Provided*, That emergency milk purchased in the form of milk and disposed of to the armed services at delivery points more than 21 miles from the milestone in Washington, D. C., may be allocated to Class I milk, if the quantity of emergency milk allocated to such Class I sales does not exceed the quantity of such sales less the excess, if any, of producer milk receipts over the total of all Class II milk disposed of within the 21-mile area as described above and all other Class I milk.

(g) Responsibility of Handlers in Establishing the Classification of Milk. In establishing the classification of any milk received at a producer milk plant, the burden rests upon the handler who received the milk directly from producers or from emergency sources to prove that it should not be classified as Class I.

§ 945.7 Minimum prices. (a) Class Prices. Each handler shall pay not less than the following prices per hundredweight of 4 percent milk, subject to (b), (c), (d), (e), and (f) of § 945.10 for milk received from producers and associations of producers at a producer milk plant.

(1) Class I. The price for Class I milk shall be $4.05.

(2) Class II. The price for Class II shall be $3.55.

(3) Class III. The price for Class III milk shall be the sum of the respective values of butterfat and skim milk calculated as follows by the market administrator:

(i) Butterfat. Add all weekly quotations (using the midpoint of any weekly range as one quotation) per 40-quart can of 40 percent sweet cream approved for "Pennsylvania" and all such quotations for sweet cream approved for "Pennsylvania, Newark, and lower Merion Township" in the Philadelphia, Pennsylvania, market, as reported for each week ending within the month by the United States Department of Agriculture, divide by the

number of quotations, subtract $1.00, divide by $33.48, multiply by 4.

(ii) Skim milk. The weighted average selling price, wholesale at manufacturers' plants, of all spray and roller [fol. 17] dried nonfat milk solids for human consumption, as published by the United States Department of Agriculture for the previous month, shall be used in determining the skim value as follows:

| Quotation per pound: | *Class III skim value* |
|---|---|
| $0.065 or below | ..... |
| $0.066 to $0.075 | $0.07½ |
| $0.076 to $0.085 | .15 |
| $0.086 to $0.095 | .22½ |
| $0.096 to $0.105 | .30 |
| $0.106 to $0.115 | .37½ |
| $0.116 to $0.125 | .45 |
| $0.126 to $0.135 | .52½ |
| $0.136 to $0.145 | .60 |
| $0.146 to $0.155 | .67½ |
| $0.156 to $0.165 | .75 |
| $0.166 to $0.175 | .82½ |
| $0.176 to $0.185 | .90 |
| $0.186 to $0.195 | .97½ |

(b) Emergency Price Provision. Whenever the provisions hereof require the market administrator to use specific price (or prices) for milk or any milk product for the purpose of determining class prices or for any other purpose, the market administrator shall add to the specified price the amount of any subsidy or other similar payment being made by any Federal agency, in connection with the milk, or product, associated with the price specified: *Provided*, That if for any reason the price specified is not reported or published as indicated, the market administrator shall use the applicable maximum uniform price established by regulations of any Federal agency plus the amount of any subsidy or other similar payment: *Provided further*, That if the specified price is not reported or published and there is no applicable uniform price, or if the specified price is not reported or published and the Secretary determines that the market price is below the applicable maximum uni-

form price, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with the price specified.

§ 945.8 Application of provisions. (a) Handlers who are also Producers. No provision hereof shall apply to a handler whose only sources of milk supply are receipts from his own production or from other handlers, except that such handler shall make reports to the market administrator at such time, to such extent, and in such manner, as the market administrator may request and shall permit the market administrator to verify such reports.

§ 945.9 Determination and announcement of uniform prices. (a) Computation and announcement for each handler of uniform prices to be paid producers. On or before the 12th day after the end of each delivery period, the market administrator shall announce the Class III price and the uniform price per hundredweight of 4 percent milk to be paid producers by each handler for such delivery period. The market administrator shall compute the uniform prices of milk received from producers as follows:

(1) Multiply the hundredweight of milk received from producers that were allocated to each class by the prices applicable pursuant to § 945.7 (a);

(2) Add together the resulting amounts;

[fol. 18] (3) Divide the result obtained by the total hundredweight of milk received from producers; and

(4) Subtract for each of the delivery periods of April, May, and June, 30 cents per hundredweight and add for each of the delivery periods of September, October, and November, the rate per hundredweight computed pursuant to § 945.10 (g) (3).

(b) Announcement of Other Market Information. As soon after the 11th day after the end of each delivery period as such information becomes available, the following data shall be announced publicly by the market administrator:

(1) The total pounds of milk and the butterfat contained therein received from producers and the total pounds of such milk allocated to each class.

(2) The total pounds of emergency milk, itemized by products, received at producer milk plants and the butterfat contained therein.

(3) The total sales of handlers of each product named in § 945.6, with the butterfat contained therein.

§ 945.10 Payments for Milk. (a) Time and Method of Payment. On or before the 14th day after the end of each delivery period, each handler shall make payments, subject to other paragraphs of this section and subject to § 945.11 (b), for all milk received from producers during the delivery period at the prices announced pursuant to § 945.9 to each producer or association of producers: *Provided*, That payments due under this section to any producers who have given authority to a cooperative association to receive payment for their milk, shall be made to the cooperative association at the uniform price computed pursuant to § 945.9 (a) (1), (2), and (3), without the adjustment provided in (4) of § 945.9 (a).

(b) Butterfat Content of Milk Received From Producers. In making payments to each producer, pursuant to (a) of this section, each handler shall add to the price not less than, or subtract from the price not more than, as the case may be, for each one-tenth of 1 percent of butterfat content above or below 4 percent in milk received from such producer, 6 cents per hundredweight. The butterfat content of milk received from producers shall be determined by taking the average of not less than five separate butterfat tests made from fresh samples during each delivery period. The butterfat content of emergency milk shall be determined at the producer's milk plant where it is received. The market administrator may designate an independent laboratory to make these tests.

(c) Location Adjustments to Producers. (1) In making payments pursuant to (a) of this section, handlers may deduct 18 cents per hundredweight with respect to milk received from producers at a plant in which no milk is bottled or finally processed for distribution to consumers and which is located more than 35 miles from the milestone in the District of Columbia and 1½ cents additional for each 10 miles in excess of 35 miles from that milestone:

*Provided*, That handlers may make such deduction on milk received at such plant by transfer of a truck route to such plant from another producer milk plant during the first four full delivery periods after such transfer, only if such milk was transferred from a plant at which a similar [fol. 19] or greater deduction was permitted. If such milk was transferred from a plant at which no deduction or a smaller deduction was permitted, the smaller deduction, or no deduction, as the case may be, must be used in computing payments until four full delivery periods have elapsed from the time of transfer.

(2) In making payments pursuant to (a) of this section, a handler whose plant is located in that part of the marketing area which is within the State of Maryland, and for which plant he does not hold a permit to distribute milk in the District of Columbia or that part of the marketing area within the State of Virginia, may deduct 46 cents per hundredweight with respect to Class I milk received from producers.

(d) Premiums To Be Paid by Handlers. (1) In making payments pursuant to (a) of this section, handlers shall pay the applicable premium rates set forth in this paragraph for each producer's deliveries on that quantity of milk received from each producer which represented such producer's proportionate share of all producer milk classified as Class I and Class II. The premium rates referred to in this paragraph shall be determined from the following schedule with respect to the cattle scores and farm scores recorded for each producer by the respective health departments requiring permits to sell milk to handlers in the marketing area:

| *Farm Score* | With cattle score under 95 *Per cwt.* | With cattle score 95 or over but under 98 *Per cwt.* | With cattle score 98 or over *Per cwt.* |
|---|---|---|---|
| Under 80 | ..... | ..... | ..... |
| 80.0-84.9 | ..... | $0.03 | $0.09 |
| 85.0-89.9 | $0.02 | .08 | .14 |
| 90.0-94.9 | .08 | .14 | .20 |
| 95.0-97.9 | .20 | .26 | .32 |
| Over 97.9 | .31 | .37 | .43 |

(2) If more than one score has been recorded during any month, the simple average of the scores so recorded shall be used. Producers who are subject to health department regulations which do not provide for cattle scores in their scoring system shall be considered as having a cattle score of 98 or over and the score given them by the health department shall be considered the farm score for the purpose of applying premiums under the above schedule.

(e) Any handler may make uniform payments to producers in addition to the minimum payments required by this section: *Provided*, That such additional payments, except payments made to producers supplying special milk to handlers for premium sales, are made to all producers supplying such handler with milk.

(f) Handlers may distribute the payments they are required to make to producers for milk received by them, on any uniform basis other than that specified above in this section, that is approved by the market administrator.

(g) Payments to the Seasonal-Adjustment Fund. (1) On or before the 15th day after the end of each delivery [fol. 20] period for April, May, and June, each handler, except handlers who have made payments to a cooperative association pursuant to the proviso in (a) of this section, shall pay to the market administrator for the account of the seasonal-adjustment fund an amount of money equal to $0.30 times the hundredweight of milk received from producers during the delivery period and cooperative associations which receive payments from handlers pursuant to the proviso in (a) of this section shall pay to the market administrator for the account of the seasonal-adjustment fund an amount of money equal to $0.30 times the hundredweight of milk delivered by the cooperative association to handlers during the delivery period for producers who have given authority to the cooperative association to receive payment for their milk.

(2) Seasonal-Adjustment Fund. The market administrator shall establish and maintain a separate fund known as the seasonal-adjustment fund into which he shall deposit all payments made by handlers or cooperative associations

pursuant to § 945.10 (g) (1) and out of which he shall make all payments pursuant to § 945.10 (g) (3): *Provided*, That payments due any handler or cooperative association shall be offset by payments due from such handler or cooperative association.

(3) Payments Out of the Seasonal-Adjustment Fund. (i) On or before the 12th day after the end of the delivery periods of September, October, and November, the market administrator shall compute a seasonal adjustment fund rate as follows: divide one-third of the aggregate amount paid to the seasonal-adjustment fund pursuant to § 945.10 (g) (1) by the total hundredweight of producer milk delivered during the delivery period involved (September, October, or November).

(ii) On or before the 15th day after the end of the delivery periods of September, October, and November, the market administrator shall pay out of the seasonal-adjustment fund to each cooperative association an amount equal to the rate computed pursuant to (i) of this paragraph times the hundredweight of milk delivered to handlers during the delivery period by such association for producers who have given authority to such cooperative association to receive payment for their milk, and to each handler an amount equal to the rate computed pursuant to (i) of this paragraph times the hundredweight of milk received during the delivery period from producers other than those producers for whom a cooperative association receives payments pursuant to the proviso in paragraph (a) of this section.

(*h*) Errors in Payment. Errors in making the payments prescribed in this section shall be corrected not later than the date for making payments next following the determination of such errors.

§ 945.11 Expense of administration and marketing services. (a) Payments by Handlers. As his pro rata share of the expense of the administration hereof, each handler shall pay to the market administrator on or before the 18th day after the end of each delivery period an amount equal to 2 cents per hundredweight with respect to all milk and cream received by him from all sources except other

handlers' producer milk plants, or produced by him, during such delivery period, or such lesser amount, the exact [fol. 21] amount to be determined by the market administrator subject to review by the Secretary. Each handler which is a cooperative association shall pay such pro-rata share of the expense of administration only on such milk and cream actually received at a producer milk plant operated by such cooperative association. If the market administrator designates an independent agency to determine the butterfat content of milk received by handlers from producers as permitted by § 945.10 (b), each handler shall pay to the market administrator an amount equal to one-half the cost of such tests of producer milk and the entire cost of such tests of emergency milk, the exact amount to be determined by the market administrator.

(b) Marketing Services. If the market administrator designates an independent agency to determine the butterfat content of milk received by handlers from producers, as permitted under § 945.10 (b), each handler shall deduct from his payments to each producer an amount equal to one-half the cost per test, the exact amount to be determined by the market administrator, and shall pay such deduction to the market administrator on or before the 18th day after the end of each delivery period. Such monies shall be used by the market administrator to pay the independent laboratory for the verification of weighing, sampling, and testing of milk received from producers.

(c) Suits by Market Administrator. The market administrator may maintain a suit in his own name against any handler for the collection of such handler's pro-rata share of expense as set forth in this section.

§ 945.12 Emergency milk committee. (a) At the application of handlers of more than 50 percent of the milk received from producers for sale in the marketing area, the Director of the Dairy Branch, Production and Marketing Administration, Department of Agriculture (hereinafter referred to as Director of Branch), may select a committee to be known as the "Emergency Milk Committee," all of whom may be selected from among the persons

nominated in accordance with the procedure established by the Director of Branch. The market administrator shall be a member of such committee and may act as chairman thereof.

(b) Duties. The Emergency Milk Committee may supervise the purchase and allocation of emergency milk and cream among handlers desiring to purchase such milk and cream through one or more importing agencies, and shall make rules and regulations subject to the approval of the Director of Branch, with respect to such allocation of milk and cream and the distribution of the cost thereof.

§ 945.13 Effective time, suspension, or termination. (a) Effective Time. The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to (b) of this section.

(b) Suspension or Termination. The Secretary may suspend or terminate this amended order or any provision hereof whenever he finds that this amended order or any provision hereof obstructs or does not tend to effectuate the declared policy of the act. This amended order shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

[fol. 22] (c) Continuing Power and Duty of the Market Administrator. (1) If, upon the suspension or termination of any or all provisions hereof, there are obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(2) The market administrator, or such other person as the Secretary may designate, shall (i) continue in such capacity until removed by the Secretary; (ii) from time to time account for all receipts and disbursements, and

when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator or such person, to such person as the Secretary shall direct; and (iii) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

(d) Liquidation after suspension or termination. Upon suspension or termination of any or all provisions hereof, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 945.14 Agents. The Secretary may, by designation in writing, name any officer or employee of the United States or name any bureau or division of the United States Department of Agriculture to act as his agent or representative in connection with any of the provisions hereof.

§ 945.15 Liability. The liability of handlers hereunder is several and not joint and no handler shall be liable for the default or any other handler.

Issued at Washington, D. C., this 26th day of October 1945, to be effective on and after the 3d day of November 1945.

(S.) Clinton P. Anderson, Secretary of Agriculture.

Approved: October 31, 1945.

(S.) Harry S. Truman.

(Here follows 1 Photolithograph, side folio 23.)



28A

EXHIBIT "B"
H F S with Petition - Feb. 23, 1951

# United States of America

H F S
With Petition
FEB. 23, 1951

Department of Agriculture

February 15, 1951, 19

to Title 28, United States Code, Section 1733, I hereby

re are now in this Department the following-described documents:

ice of Proposed Rule Making - Consideration of Suspension of
ing Provisions of the Orders, as Amended, Regulating the
ling of Milk in the New York Metropolitan, Philadelphia,
sylvania, Washington, D. C., Greater Boston, Lowell-Lawrence,
Fall River, Massachusetts, Milk Marketing Areas, issued by
Secretary of Agriculture on January 3, 1947

ination of Order, as Amended, Regulating the Handling of Milk
e Washington, D. C., Marketing Area, issued by the Secretary
riculture on March 27, 1947, effective March 31, 1947

true rrect, and compared copies thereofare attached hereto.

**By direction of the Secretary of Agriculture, and in witness whereof,** the said copies are hereby authenticated, the seal of the Department of Agriculture is affixed hereto, and I have signed my name hereto on the day and year first above written.

Charles W. Bucy
Associate SOLICITOR

23

BLEED THROUGH POOR COPY

[fol. 24] United States Department of Agriculture

Production and Marketing Administration

New York Metropolitan, Philadelphia, Pennsylvania, Washington, D. C., Greater Boston, Lowell-Lawrence, and Fall River, Massachusetts, Milk Marketing Areas.

*Notice of Proposed Rule Making*

Consideration of Suspension of Pricing Provisions of the Orders, as Amended, Regulating the Handling of Milk in the New York Metropolitan, Philadelphia, Pennsylvania, Washington, D. C., Greater Boston, Lowell-Lawrence, and Fall River, Massachusetts, Milk Marketing Areas.

Notice is given that pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 1940 ed. 601 *et seq.*), consideration is being given to the suspension of such of the class pricing provisions of Orders Nos. 27, 61, 45, 4, 34, and 47, as amended, regulating the handling of milk in the New York Metropolitan, Philadelphia, Pennsylvania, Washington, D. C., Greater Boston, Lowell-Lawrence, and Fall River, Massachusetts marketing areas, respectively, as may be necessary to reflect current economic conditions affecting the market supply and demand for milk and its products in the aforesaid marketing areas.

In accordance with the Administrative Procedure Act (Public Law 404, 79th Cong., 60 Stat. 237), all persons who desire to submit oral or written data, views, or argument with respect to the specific adjustment of prices for all classes of milk in the aforesaid marketing areas as may be necessary to reflect current economic conditions affecting the supply and demand for milk and its products, will be given an opportunity to do so at the Thomas Jefferson Auditorium, South Building, United States Department of Agriculture, Washington, D. C., beginning at 10 a. m. January 9, 1947.

Issued at Washington, D. C., this 3rd day of January 1947.

(S.) Clinton P. Anderson, Secretary of Agriculture.

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[fol. 25] Title 7—Agriculture

Chapter IX—Production and Marketing Administration
(Marketing Agreements and Orders)

Part 945—Milk in Washington, D. C., Marketing Area
Termination of Order, as Amended

It is provided in Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*), hereinafter referred to as the "act," that the Secretary of Agriculture shall terminate, at the end of the then current marketing period, any order issued under the act whenever he finds that such termination is favored by the requisite majority of producers.

It Is Hereby Found That the termination of Order No. 45, as amended (Sections 945.1-945.15 inclusive), regulating the handling of milk in the Washington marketing area, hereinafter referred to as the "order," is favored by a majority of the producers who, during January 1947 (which is hereby determined to be a representative period), were engaged in the production of milk for sale within the Washington marketing area, and such majority, during such representative period, produced more than 50 percent of the volume of such commodity sold in the aforesaid milk marketing area.

[fol. 26] It Is Further Found and hereby determined that compliance with the notice and public rule making procedure requirements of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 60 Stat. 237) is impracticable, unnecessary, and contrary to the public interest in that the time intervening between the date when the conditions necessitating the foregoing findings relating to the requisite producer approval, became apparent and the mandatory effective date of the termination of the order resulting therefrom is insufficient to permit such compliance.

It Is, Therefore, Ordered, That the said order, regulating the handling of milk in the Washington marketing area be, and the same hereby is, terminated effective at 11:59 p.m.,

e.s.t. March 31, 1947, subject, however, to the following conditions:

(1) That such termination of the said order shall not affect or waive any right, obligation, duty, or liability under the said order, or release or extinguish any violation of the said order, or affect or impair any right or remedy of the United States, the Secretary of Agriculture, or any other person with respect to any such violation which has arisen or occurred or which may arise or occur prior to the time that such termination becomes effective;

(2) That the provisions of § 945.13 of the said order, relating to proceedings subsequent to the termination of such order, shall remain in force and effect for the purpose of enabling the market administrator, designated as the [fol. 27] agency established for the administration of such order, to liquidate the affairs of the market administrator's office pursuant to the provisions of the said order;

(3) That the market administrator shall, in accordance with the applicable provisions of § 945.13, continue in such capacity and, from time to time, account for all funds, receipts, and disbursements; and

(4) That the said market administrator, continuing in such capacity, as provided in said § 945.13, shall have all of the powers and authority that may be necessary or proper in order to carry out the provisions thereof, and that such market administrator shall perform the duties specified therein.

The terms "Washington marketing area" and "market administrator" shall have the same meaning as set forth for the respective term in such order.

(48 Stat. 31, 670, 673; 49 Stat. 730; 50 Stat. 246; 7 U.S.C. 601 *et seq.*)

Issued at Washington, D.C., this 27 day of March 1947.

(S.) Clinton P. Anderson, Secretary of Agriculture.

# EXHIBIT "C"



COMMONWEALTH OF VIRGINIA
STATE MILK COMMISSION
RICHMOND

ORDER AMENDING ORDER NO. 3, BY AMENDING SECTION 2, OF PARAGRAPH B, OF REGULATION NO. 1, AND REGULATION NO. 2, RETAIL AND WHOLESALE SELLING PRICES, OF THE RULES AND REGULATIONS FOR THE SUPERVISION AND CONTROL OF THE ARLINGTON-ALEXANDRIA MILK MARKET

EFFECTIVE 12:01 A.M., JANUARY 21, 1951, SECTION 2, OF PARAGRAPH B, OF REGULATION NO. 1, AND REGULATION NO. 2, RETAIL AND WHOLESALE SELLING PRICES, OF THE RULES AND REGULATIONS FOR THE SUPERVISION AND CONTROL OF THE ARLINGTON-ALEXANDRIA MILK MARKET, ARE HEREBY AMENDED AND REENACTED TO READ IN FULL AS FOLLOWS:

REGULATION NO. 1
MINIMUM PRICES TO BE PAID PRODUCERS FOR MILK
AND METHOD OF PAYMENT

B. MINIMUM PRICES TO BE PAID BY DISTRIBUTORS

2. CLASS I MILK.....$6.17 PER CWT. FOR MILK CONTAINING FOUR PER CENT (4%) BUTTERFAT.

REGULATION NO. 2
RETAIL AND WHOLESALE SELLING PRICES

THE FOLLOWING SCHEDULE OF MINIMUM PRICES SHALL PREVAIL IN THE ARLINGTON-ALEXANDRIA SALES AREA, EXCLUSIVE OF THE SALVAGE OR RECEMPTION VALUE OF ANY CONTAINER IN WHICH ANY MILK, AND/OR CREAM OR OTHER PRODUCT LISTED HEREIN IS DELIVERED TO A PURCHASER.

| | RETAIL | WHOLESALE |
|---|---|---|
| A. MILK, CULTURED WHOLEMILK, HOMOGENIZED MILK, 3.25-4.25% BUTTERFAT AND CULTURED BUTTERMILK CONTAINING MORE THAN 1.5% BUTTERFAT | | |
| GALLONS - BULK | | .77 |
| QUARTS - SINGLE QUART DELIVERY | .22½ | .20 |
| *QUARTS - THREE-QUART DELIVERY | .21½ | |
| *QUARTS - SIX-QUART DELIVERY | .20 | |
| PINTS | .13 | .11½ |
| HALF-PINTS | .07½ | .06½ |
| B. MILK, CULTURED WHOLEMILK, HOMOGENIZED MILK, 3.25-4.25% BUTTERFAT, AND CULTURED BUTTERMILK CONTAINING MORE THAN 1.5% BUTTERFAT (SOLD THROUGH STORES) | | |
| HALF-GALLONS-DELIVERED IN TWO-QUART CONTAINERS | .41 | |
| QUARTS | .20½ | |
| C. MILK 4.26-5.5% BUTTERFAT - INCLUDING JERSEY AND GUERNSEY MILK | | |
| GALLONS - BULK | | .85 |
| QUARTS - SINGLE QUART DELIVERY | .24½ | .22½ |
| *QUARTS - THREE-QUART DELIVERY | .23½ | |
| *QUARTS - SIX-QUART DELIVERY | .22½ | |
| PINTS | .14 | .12½ |
| HALF-PINTS | .073/4 | .07½ |
| D. MILK 4.26-5.5% BUTTERFAT - INCLUDING JERSEY AND GUERNSEY MILK (SOLD THROUGH STORES) | | |
| HALF-GALLONS-DELIVERED IN TWO-QUART CONTAINERS | .45 | |
| QUARTS | .22½ | |

| | RETAIL | WHOLESALE |
|---|---|---|
| E. VITAMIN "D" HOMOGENIZED MILK 3.25-4.25% BUTTERFAT | | |
| GALLONS - BULK | | .77 |
| QUARTS - SINGLE QUART DELIVERY | .23½ | .21 |
| *QUARTS - THREE-QUART DELIVERY | .22½ | |
| *QUARTS - SIX-QUART DELIVERY | .21½ | |
| PINTS | | .12 |
| HALF-PINTS | | .06½ |
| F. VITAMIN "D" HOMOGENIZED MILK 3.25-4.25% BUTTERFAT (SOLD THROUGH STORES) | | |
| HALF-GALLONS-DELIVERED IN TWO-QUART CONTAINERS | .43 | |
| QUARTS | .21½ | |
| G. CULTURED SKIM MILK AND/OR BUTTERMILK (CONTAINING LESS THAN 1.5% BUTTERFAT) | | |
| GALLONS - BULK | | .54 |
| QUARTS | .18 | .16 |
| PINTS | | .09 |
| HALF-PINTS | | .05½ |
| H. CULTURED SKIM MILK AND/OR BUTTERMILK (CONTAINING LESS THAN 1.5% BUTTERFAT) (SOLD THROUGH STORES) | | |
| HALF-GALLONS-DELIVERED IN TWO-QUART CONTAINERS | .32 | |
| QUARTS | .16 | |
| I. CHOCOLATE OR OTHER FLAVORED MILKS OR DRINKS (TO CONTAIN NOT LESS THAN 1% BUTTERFAT) | | |
| GALLONS - BULK | | .77 |
| QUARTS - SINGLE QUART DELIVERY | .22½ | .20 |
| *QUARTS - THREE-QUART DELIVERY | .21½ | |
| *QUARTS - SIX-QUART DELIVERY | .20 | |
| PINTS | .13 | .11½ |
| HALF-PINTS | .07½ | .06½ |
| J. CHOCOLATE OR OTHER FLAVORED MILKS OR DRINKS (TO CONTAIN NOT LESS THAN 1% BUTTERFAT) (SOLD THROUGH STORES) | | |
| HALF-GALLONS-DELIVERED IN TWO-QUART CONTAINERS | .41 | |
| QUARTS | .20½ | |
| K. CREAM 18-22% BUTTERFAT (SWEET OR SOUR) | | |
| GALLONS - BULK | | $2.60 |
| QUARTS | .71 | .65 |
| PINTS | .40 | .35 |
| HALF-PINTS | .22 | .19 |
| L. CREAM 33-38% BUTTERFAT (SWEET OR SOUR) | | |
| GALLONS - BULK | | $5.20 |
| QUARTS | $1.38 | 1.30 |
| PINTS | .78 | .70 |
| HALF-PINTS | .42 | .37 |
| M. HALF AND HALF 11-13% BUTTERFAT | | |
| GALLONS - BULK | | $1.69 |
| QUARTS | .47 | .43 |
| PINTS | .27 | .23 |
| HALF-PINTS | .15 | .13 |

*SEE PARAGRAPH N

N. THE QUANTITY PRICES PRESCRIBED IN PARAGRAPHS A, C, E AND I, OF THIS REGULATION FOR THE THREE OR SIX QUART DELIVERIES, SHALL NOT APPLY EXCEPT WHERE SUCH THREE OR SIX QUART PURCHASES ARE EQUIVALENT TO THREE OR SIX QUARTS PER DAY FOR A DELIVERY PERIOD OF NOT LESS THAN 30 DAYS.

O. THE SCHEDULES OF PRICES OF MILK "SOLD THROUGH STORES" CONTAINED IN PARAGRAPHS B, D, F, H AND ., OF THIS REGULATION, SHALL APPLY ONLY TO SALES OF MILK MADE TO AND BY STORES, HAVING A MERCHANT'S LICENSE, WHICH SELL MILK, IN THE ORIGINAL CONTAINERS, TO BE CONSUMED EITHER ON OR OFF THE PREMISES AND TO LICENSED DISTRIBUTORS OF MILK MAKING RETAIL SALES IN THE SALES ROOM OF THEIR DISTRIBUTING PLANT.

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MADE, ADOPTED AND POSTED FOR INSPECTION, AS HEREIN AMENDED, IN THE MAIN OFFICE OF THE COMMISSION, AND A CERTIFIED COPY THEREOF, ORDERED TO BE FILED, IN THE OFFICE OF THE COMMISSIONER OF AGRICULTURE, PURSUANT TO AUTHORITY VESTED IN THE COMMISSION, BY SECTION 3, OF THE MILK AND CREAM ACT, CHAPTER 357, ACTS OF ASSEMBLY, 1934, PAGE 558, AS AMENDED, THIS SEVENTEENTH DAY OF JANUARY 1951.

STATE MILK COMMISSION

E. L. HILLNER, COMMISSIONER

V. P. RANDOLPH, JR., COMMISSIONER

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**EXHIBIT "C"**

COMMONWEALTH OF VIRGINIA
STATE MILK COMMISSION
RICHMOND

# RULES AND REGULATIONS FOR THE SUPERVISION AND CONTROL OF THE ARLINGTON-ALEXANDRIA MARKET

EFFECTIVE APRIL 1, 1936

REVISED APRIL 1, 1950

COMMONWEALTH OF VIRGINIA
STATE MILK COMMISSION
RICHMOND

# RULES AND REGULATIONS FOR THE SUPERVISION AND CONTROL OF THE ARLINGTON-ALEXANDRIA MILK MARKET

(AUTHORITY-MILK AND CREAM ACT, CHAPTER 357, ACTS OF ASSEMBLY, 1934, AS AMENDED)

EFFECTIVE 12:01 A.M., APRIL 1, 1950, AND POSTED IN THE OFFICE OF THE COMMISSION AND A CERTIFIED COPY FILED IN THE OFFICE OF THE COMMISSIONER OF AGRICULTURE IN RICHMOND.

THESE REGULATIONS AMEND AND REENACT THE REGULATIONS HERETOFORE ADOPTED.

## DEFINITIONS

AS USED IN THE RULES AND REGULATIONS, UNLESS OTHERWISE STATED, AND UNLESS THE SUBJECT CLEARLY INDICATES OTHERWISE.

"COMMISSION", "DISTRIBUTOR", "PRODUCER", "PRODUCER-DISTRIBUTOR", "CONSUMER", "LICENSEE", "MILK", "SUBSIDIARY", "AFFILIATE", "BOARDS", "BOOKS", "RECORDS", "HEALTH AUTHORITIES" AND "SANITARY REGULATIONS" ARE CLEARLY DEFINED IN THE MILK AND CREAM ACT, CHAPTER 357, ACTS OF ASSEMBLY, SESSION 1934, AS AMENDED.

"MILK" MEANS MILK AS DEFINED BY LAW, INCLUDING LOCAL ORDINANCES APPLICABLE IN THE SALES AREA.

"BREED MILK" MEANS MILK PRODUCED BY A HERD CONSISTING OF THE REGISTERED CATTLE AND/OR GRADE CATTLE OF THE BREED MILK ADVERTISED. ALL THE CATTLE MUST BEAR THE COLOR AND GENERAL CONFORMATION OF THE REGISTERED CATTLE OF THAT BREED.

"NEW PRODUCER" MEANS ONE WHO SECURES A PERMIT FROM THE HEALTH DEPARTMENT AS REQUIRED BY STATE OR LOCAL ORDINANCES ON THIS MARKET, AND HAS ALSO MADE APPLICATION TO THE LOCAL MILK BOARD AND HAS SECURED PERMISSION FROM THE COMMISSION TO SELL HIS MILK AND/OR CREAM WITHIN THE SALES AREA AFTER THE EFFECTIVE DATE OF THESE REGULATIONS.

"DELIVERY PERIOD" MEANS THE CALENDAR MONTH.

"BASE" MEANS THE ESTABLISHED QUANTITY OF MILK AND/OR CREAM SET UP FOR EACH PRODUCER ON AN EQUITABLE BASIS WITH ALL OTHER PRODUCERS FOR APPORTIONING FLUID MILK AND FLUID CREAM SALES AMONG THE PRODUCERS.

"ARLINGTON-ALEXANDRIA SALES AREA" MEANS THE TERRITORY INCLUDED WITHIN THE FOLLOWING BOUNDARIES, AND OTHER AREAS SPECIFIED HEREIN:

BEGINNING AT THE JUNCTION OF THE WESTERLY BOUNDARY OF THE FAIRFAX COUNTY LINE AND THE POTOMAC RIVER; THENCE SOUTHWESTERLY ALONG THE SAID COUNTY LINE TO ITS JUNCTION WITH HIGHWAY 50; THENCE SOUTHEASTERLY ON HIGHWAY 50 TO ITS JUNCTION WITH ROAD 656; THENCE SOUTHERLY ON ROAD 656 TO ITS JUNCTION WITH HIGHWAY 29; THENCE FROM THIS POINT IN A STRAIGHT LINE SOUTHEASTERLY TO THE JUNCTION OF ROADS 655 AND 620; THENCE EASTERLY ON ROAD 620 TO ITS JUNCTION WITH HIGHWAY 123; THENCE SOUTHERLY ON HIGHWAY 123 TO ROAD 636; THENCE FROM THIS POINT IN A STRAIGHT LINE SOUTHWESTERLY FROM THE JUNCTION OF ROAD 636 AND HIGHWAY 123 TO THE JUNCTION OF ROADS 641 AND 642 IN PRINCE WILLIAM COUNTY; THENCE SOUTHEASTERLY ALONG ROAD 642 TO ROAD 640; THENCE NORTHEASTERLY ALONG ROAD 640 TO ROAD 639; THENCE EASTERLY ALONG ROAD 639 TO HIGHWAY 123; THENCE SOUTHEASTERLY ALONG HIGHWAY 123 TO HIGHWAY 1; THENCE CROSS HIGHWAY 1 AND CONTINUE SOUTHEASTERLY ALONG ROAD 637 TO DAWSON BEACH; THENCE IN A STRAIGHT LINE DUE EAST TO THE POTOMAC RIVER; THENCE UP SAID RIVER TO ITS JUNCTION WITH THE WESTERN BOUNDARY OF THE FAIRFAX COUNTY LINE, THE POINT OF BEGINNING.

WHEREVER ROAD OR HIGHWAY NUMBERS ARE GIVEN AS BOUNDARY LINES IN THE ABOVE PARAGRAPH, ALL AREAS WITHIN THREE HUNDRED YARDS OF SAID ROADS OR HIGHWAYS WILL BE CONSIDERED A PART OF THE "SALES AREA" OF THE ARLINGTON-ALEXANDRIA MILK MARKET.

"ARLINGTON-ALEXANDRIA PRODUCTION AREA" MEANS THE TERRITORY INCLUDED WITHIN THE FOLLOWING BOUNDARIES:

BEGINNING AT THE JUNCTION OF THE STAFFORD AND PRINCE WILLIAM COUNTY LINE AT THE POTOMAC RIVER; THENCE NORTHWESTERLY ALONG SAID LINE TO HIGHWAY 1; THENCE SOUTHERLY ALONG HIGHWAY 1 TO HIGHWAY 3; THENCE WESTERLY ALONG HIGHWAY 3 TO HIGHWAY 20; THENCE WESTERLY ALONG HIGHWAY 20 TO HIGHWAY 49; THENCE SOUTHERLY ALONG HIGHWAY 49 TO NORTH ANNA RIVER; THENCE WESTERLY ALONG SAID RIVER TO HIGHWAY 4; THENCE NORTHWESTERLY ALONG HIGHWAY 4 TO HIGHWAY 29; THENCE NORTHERLY ALONG HIGHWAY 29 TO HIGHWAY 16; THENCE NORTHERLY ALONG SAID HIGHWAY TO HIGHWAY 211; THENCE NORTHEASTERLY ALONG SAID HIGHWAY TO HIGHWAY 3; THENCE NORTHERLY ALONG SAID HIGHWAY TO COUNTY LINE OF WARREN AND

RAPPAHANNOCK; THENCE NORTHEASTERLY ALONG SAID LINE TO THE WARREN AND FAUQUIER COUNTY LINE; THENCE IN THE SAME DIRECTION TO CLARKE-FAUQUIER COUNTY LINE; THENCE IN THE SAME DIRECTION ALONG SAID LINE TO THE CLARKE-LOUDOUN COUNTY LINE; THENCE NORTHEASTERLY ALONG SAID LINE TO THE INTERSECTION OF THE WEST VIRGINIA AND VIRGINIA STATE LINE; THENCE NORTHERLY ALONG SAID STATE LINE TO THE POTOMAC RIVER; THENCE DOWN THE POTOMAC RIVER TO THE JUNCTION OF THE STAFFORD AND PRINCE WILLIAM COUNTY LINE, THE POINT OF BEGINNING.

PROVIDED, HOWEVER, THAT PRODUCERS, PRODUCER-DISTRIBUTORS, OR THEIR SUCESSORS, SHIPPING MILK TO THIS MARKET ON THE EFFECTIVE DATE OF THE FIRST REGULATIONS ESTABLISHED IN THIS MARKET, MAY CONTINUE SO TO DO, UNTIL THEY VOLUNTARILY DISCONTINUE SHIPPING TO THIS MARKET.

## REGULATION NO. 1
## MINIMUM PRICES TO BE PAID PRODUCERS FOR MILK AND METHOD OF PAYMENT

A. CLASSIFICATION OF MILK.

1. CLASS I MILK - ALL MILK, SKIM MILK, CREAM (EXCEPT CREAM GOING INTO HALF AND HALF) AND MILK PRODUCTS WHICH ARE DISPOSED OF FOR FLUID CONSUMPTION AS MILK, SKIM MILK, MILK DRINKS, BUTTERMILK, HALF AND HALF, AND ALL MILK NOT ACCOUNTED FOR IN CLASS II AND CLASS III, EXCEPT THAT MILK, SKIM MILK, MILK DRINKS, BUTTERMILK AND HALF AND HALF WHICH ARE SOLD ON RECOGNIZED FEDERAL STATE OR MUNICIPAL CONTRACT.

2. CLASS II MILK - ALL MILK, SKIM MILK, CREAM AND MILK PRODUCTS WHICH ARE USED IN THE MANUFACTURE OF, OR DISPOSED OF IN, COTTAGE CHEESE, POT CHEESE, OR BAKER'S CHEESE, EGGNOG, CREAM FOR FLUID CONSUMPTION (INCLUDING CREAM USED IN HALF AND HALF) AND ANY MILK RESULTING FROM PLANT LOSS OR GAIN PURSUANT TO REGULATION NO. 1, PARAGRAPH C, SECTION 6.

3. CLASS III MILK - ALL MILK, SKIM MILK, CREAM, AND MILK PRODUCTS USED IN A DISTRIBUTOR'S MILK PLANT AS, OR DISPOSED OF TO A PLANT ENGAGED IN THE WHOLESALE MANUFACTURE OF ICE CREAM AND SIMILAR FROZEN DAIRY PRODUCTS AND MIXES, THEREFORE, BUTTER, ROLLER OR SPRAY NON-FAT DRY MILK SOLIDS, CONDENSED MILK, CONDENSED SKIM MILK, OR CHEESE OTHER THAN COTTAGE, POT OR BAKER'S CHEESE, AND USED AS SUCH, AND ALL MILK, CREAM AND SKIM MILK SOLD TO BAKERIES TO BE USED IN THE MANUFACTURE OF BAKERY PRODUCTS, AND ANY MILK RESULTING FROM PLANT LOSS OR GAIN PURSUANT TO REGULATION NO. 1, PARAGRAPH C, SECTION 6.

B. MINIMUM PRICES TO BE PAID BY DISTRIBUTORS.

1. EACH DISTRIBUTOR SHALL PAY PRODUCERS OR ASSOCIATIONS OF PRODUCERS, IN THE MANNER SET FORTH IN PARAGRAPH F, OF THIS REGULATION, AND NOT LESS THAN THE PRICES PRESCRIBED IN THIS REGULATION.

2. CLASS I MILK - THE PRICE FOR CLASS I MILK SHALL BE $5.60 PER CWT.

3. CLASS II MILK - THE PRICE COMPUTED FOR CLASS III MILK.

4. CLASS III MILK - THE PRICE FOR CLASS III MILK SHALL BE THE SUM OF THE RESPECTIVE VALUES OF BUTTERFAT AND SKIM MILK CALCULATED AS FOLLOWS:

   (A) BUTTERFAT:

   ADD ALL WEEKLY QUOTATIONS (USING THE MID-POINT OF ANY WEEKLY RANGE AS ONE QUOTATION) PER 40-QUART CAN OF 40 PER CENT SWEET CREAM APPROVED FOR "PENNSYLVANIA" AND ALL SUCH QUOTATIONS FOR SWEET CREAM APPROVED FOR "PENNSYLVANIA, NEWARK, AND LOWER MERION TOWNSHIP" IN THE PHILADELPHIA, PENNSYLVANIA MARKET, AS REPORTED FOR EACH WEEK ENDING WITHIN THE MONTH BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, DIVIDE BY THE NUMBER OF QUOTATIONS, SUBTRACT $2.00, DIVIDE BY 33.48, MULTIPLY BY 4.

   (B) SKIM MILK:

   THE WEIGHTED AVERAGE SELLING PRICE, WHOLESALE AT MANUFACTURERS' PLANTS, OF ALL SPRAY AND ROLLER DRIED NON-FAT MILK SOLIDS FOR HUMAN CONSUMPTION, AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE FOR THE PREVIOUS MONTH, SHALL BE USED IN DETERMINING THE SKIM VALUE AS FOLLOWS:

C.

| Quotation Per Pound | Class III Skim Milk |
|---|---|
| $0.065 or below | $0.00 |
| 0.066 to 0.075 | 0.07½ |
| 0.076 to 0.085 | .15 |
| 0.086 to 0.095 | .22½ |
| 0.096 to 0.105 | .30 |
| 0.106 to 0.115 | .37½ |
| 0.116 to 0.125 | .45 |
| 0.126 to 0.135 | .52½ |
| 0.136 to 0.145 | .60 |
| 0.146 to 0.155 | .67½ |
| 0.156 to 0.165 | .75 |
| 0.166 to 0.175 | .82½ |
| 0.176 to 0.185 | .90 |
| 0.186 to 0.195 | .97½ |

5. Premiums - In making payments pursuant to Section 2, of this paragraph, distributors shall pay the applicable premium rates set forth in this section for each producer's deliveries on that quantity of milk received from each producer which represented such producer's proportionate share of all producer milk classified as Class I. The premium rates referred to in this section shall be determined from the following schedule with respect to the cattle scores and farm scores recorded for each producer by the respective health departments requiring permits to sell milk to distributors in the sales area:

| Farm Score | With Cattle Score Under 95 (per cwt) | With Cattle Score 95 or Over, but under 98 (per cwt) | With Cattle Score 98, or Over (per cwt) |
|---|---|---|---|
| Under 80 | $0.00 | $0.00 | $0.00 |
| 80.0 - 84.9 | .00 | .03 | .09 |
| 85.0 - 89.9 | .02 | .08 | .14 |
| 90.0 - 94.9 | .08 | .14 | .20 |
| 95.0 - 97.9 | .20 | .26 | .32 |
| Over 97.9 | .31 | .37 | .43 |

If more than one score has been recorded during any month, the simple average of the scores so recorded shall be used. Producers who are subject to Health Department Regulations which do not provide for cattle scores in their scoring system shall be considered as having a cattle score of 98 or over and the score given them by the Health Department shall be considered the farm score for the purpose of applying premiums under the above schedule.

Any distributor may make uniform payments to producers in addition to the minimum payments required by this section: Provided, that such additional payments, except payments made to producers supplying breed milk to distributors for premium sales, are made to all producers supplying such distributor with milk.

6. Butterfat Differential - In making payments to each producer pursuant to Sections 2, 3 and 4 of this Paragraph, each distributor shall add to the price not less than or subtract from the price not more than, as the case may be, for each one-tenth of one per cent of butterfat content above or below four per cent in milk received from such producer, six cents per hundredweight. The butterfat content of milk received from producers shall be determined by taking the average of not less than five separate butterfat tests made from fresh samples during each delivery period.

C. Computation of milk in each class.

For each delivery period the Secretary of the Local Board shall correct the mathematical errors the reports submitted by each distributor and compute from the corrected report the amount of Class I milk, Class II milk and Class III milk as follows:

1. Determine the total pounds of milk to be accounted for as follows:

Add into one sum:

(a) The total pounds of milk received from producer's and distributor's own farm production.

(b) The total pounds of milk, skim milk and cream received, and the total pounds of milk, skim milk and cream received in the form of other milk products, and

(c) THE MILK EQUIVALENT OF THE BUTTERFAT IN ANY PLANT GAIN DETERMINED PURSUANT TO SECTION 6, OF THIS PARAGRAPH.

2. DETERMINE THE TOTAL POUNDS OF BUTTERFAT TO BE ACCOUNTED FOR AS FOLLOWS:

(A) MULTIPLY BY ITS AVERAGE BUTTERFAT TEST THE WEIGHT OF THE MILK RECEIVED FROM PRODUCERS' AND DISTRIBUTORS' OWN FARM PRODUCTION,

(B) MULTIPLY BY ITS WEIGHTED AVERAGE BUTTERFAT TEST THE WEIGHT OF THE MILK, SKIM MILK, CREAM AND MILK PRODUCTS RECEIVED FROM ALL OTHER SOURCES,

(C) ADD THE RESULTING AMOUNTS INTO ONE SUM.

3. DETERMINE THE TOTAL POUNDS OF CLASS I MILK AS FOLLOWS:

(A) CONVERT TO POUNDS THE QUANTITY OF MILK, SKIM MILK, BUTTERMILK AND MILK DRINKS DISPOSED OF FOR FLUID CONSUMPTION, INCLUDING MILK USED IN HALF AND HALF,

(B) MULTIPLY THE WEIGHT OF THE PRODUCTS COMPUTED PURSUANT TO (A) OF THIS SECTION EACH BY ITS AVERAGE BUTTERFAT TEST, ADD TOGETHER THE RESULTING AMOUNTS, AND DIVIDE BY THE PRODUCER PLANT TEST; AND

(C) ADD TO THIS AMOUNT ANY AMOUNT BY WHICH THE SUM OF THE QUANTITIES COMPUTED PURSUANT TO (A) OF THIS SECTION, EXCEED THE AMOUNT COMPUTED PURSUANT TO (B) OF THIS SECTION.

4. DETERMINE THE TOTAL POUNDS OF CLASS II MILK AS FOLLOWS:

(A) MULTIPLY THE WEIGHT OF THE CREAM DISPOSED OF FOR FLUID CONSUMPTION INCLUDING CREAM USED IN HALF AND HALF AND THE COTTAGE, POT OR BAKER'S CHEESE EACH BY ITS AVERAGE BUTTERFAT TEST, ADD TOGETHER THE RESULTING AMOUNTS, AND DIVIDE BY THE PRODUCER PLANT TEST;

(B) ADD TO THIS AMOUNT ANY AMOUNT BY WHICH THE TOTAL PRODUCT POUNDS OF CREAM DISPOSED OF FOR CONSUMPTION AS FLUID CREAM AND THE POUNDS OF CREAM AND SKIM MILK DISPOSED OF IN COTTAGE, POT OR BAKER'S CHEESE EXCEEDS THE AMOUNT COMPUTED PURSUANT TO (A) OF THIS SECTION; AND

(C) SUBTRACT FROM THE AMOUNT COMPUTED PURSUANT TO (B) OF THIS SECTION, ANY AMOUNT BY WHICH THAT AMOUNT WHEN ADDED TO THE AMOUNT OF CLASS I MILK DETERMINED PURSUANT TO SECTION 3, OF THIS PARAGRAPH, EXCEEDS THE TOTAL POUNDS OF MILK RECEIVED COMPUTED PURSUANT TO SECTION 1, OF THIS PARAGRAPH.

5. DETERMINE THE TOTAL POUNDS OF CLASS III MILK AS FOLLOWS:

(A) MULTIPLY THE WEIGHT OF EACH OF THE PRODUCTS OF CLASS III MILK BY ITS AVERAGE BUTTERFAT TEST, ADD TOGETHER THE RESULTING AMOUNTS, AND DIVIDE BY THE PRODUCER PLANT TEST;

(B) ADD TO THIS AMOUNT ANY AMOUNT BY WHICH THE TOTAL PRODUCT POUNDS OF MILK, SKIM MILK AND CREAM DISPOSED OF IN CLASS III PRODUCTS EXCEEDS THE AMOUNT COMPUTED PURSUANT TO (A) OF THIS SECTION; AND

(C) SUBTRACT FROM THE AMOUNT COMPUTED PURSUANT TO (B) OF THIS SECTION, ANY AMOUNT BY WHICH THAT AMOUNT WHEN ADDED TO THE AMOUNT OF CLASS I MILK DETERMINED PURSUANT TO SECTION 3, OF THIS PARAGRAPH, IN CLASS II MILK DETERMINED PURSUANT TO SECTION 4, OF THIS PARAGRAPH, EXCEEDS THE TOTAL POUNDS OF MILK RECEIVED COMPUTED PURSUANT TO SECTION 1, OF THIS PARAGRAPH.

6. PLANT LOSS OR GAIN TO BE DETERMINED AND CLASSIFIED AS FOLLOWS:

(A) ADD TOGETHER THE POUNDS OF BUTTERFAT CONTAINED IN THE POUNDS OF CLASS I, CLASS II AND CLASS III MILK.

(B) IF THE TOTAL POUNDS OF BUTTERFAT ARRIVED AT PURSUANT TO (A) OF THIS SECTION IS GREATER THAN THE TOTAL POUNDS OF BUTTERFAT COMPUTED PURSUANT TO SECTION 2, OF THIS PARAGRAPH, THEN THE RESULTING BUTTERFAT GAIN SHALL BE DIVIDED BY THE PRODUCER PLANT TEST AND THE RESULTING AMOUNT BE ADDED TO PRODUCER RECEIPTS IN ACCORDANCE WITH (C) OF SECTION 1, OF THIS PARAGRAPH.

(C) IF THE TOTAL POUNDS OF BUTTERFAT ARRIVED AT PURSUANT TO (A) OF THIS SECTION IS LESS THAN THE TOTAL POUNDS OF BUTTERFAT COMPUTED PURSUANT TO SECTION 2, OF THIS PARAGRAPH, DIVIDE THE DIFFERENCE BY THE PRODUCER PLANT TEST, AND FIRST SUBTRACT THE RESULTING AMOUNT FROM THE LOWEST CLASS OR CLASSES ARRIVED AT PURSUANT TO SECTIONS 3, 4, AND 5 OF THIS PARAGRAPH.

(1) Add to the Class III pounds determined according to Section 5 and Section 6 (c), any amount not greater than 1⅛ of the milk equivalent of the pounds determined pursuant to Section 2, of this Paragraph, but in no event shall this amount be greater than the amount arrived at pursuant to Subsection (c) of this Section. In the event the amount determined pursuant to Subsection (c), of this Section, is in excess of 1⅛, then such excess shall be prorated and added to Classes I, II and III on a percentage basis of the fat contained in Classes I, II and III, as computed pursuant to Sections 3, 4, 5 and 6 (c), of this Paragraph.

Footnote: 1. For the purpose of computation in Regulation No. 1, the butterfat content of skim milk shall be determined by a laboratory test of the skim milk acceptable to both parties or by a computation of the fat contained in the ultimate product resulting from the manufacture of such skim milk as the case may be. Except that in the event no acceptable laboratory test has been made of either the skim milk or the finished product made from the skim milk then, and in that event, the skim milk shall be deemed to have a butterfat content of .02 per cent.

D. Allocation of Producer Milk.

1. Producer milk received by a distributor shall first be allocated to Class I but not to exceed the Class I pounds as determined, pursuant to Paragraph C, Section 3.

2. Producer milk received by a distributor in excess of such Class I utilization shall be allocated to Class II but not to exceed the Class II pounds as determined pursuant to Paragraph C, Section 4.

3. Producer milk received by a distributor in excess of Class I and Class II utilization shall be in Class III.

E. Responsibility of Distributors in Establishing the Classification of Milk.

In establishing the classification of any milk received at a distributor's plant, the burden rests upon the distributor who received the milk directly from producers to prove that it should not be classified as Class I.

F. Payment to Producers.

1. On or before the 15th. day after the end of each delivery period each distributor shall make payment for the total value of milk and/or cream received from producers during such delivery period according to classifications and prices as set forth in Paragraphs A and B, in the manner set forth, as follows:

(a) To each producer except as provided in (b) of this Section at not less than the prices announced in Paragraph B, of this Regulation.

(b) To a cooperative association for

(1) Milk, skim milk and cream which is caused to be delivered to a distributor from producers by a cooperative association and for which such cooperative association collects payment, a total amount equal to not less than the sum of the individual payments otherwise payable to such producers under (a) of this Section.

2. Other milk in each use classification, determined pursuant to (a) of this Paragraph, received by such distributor for the account of an association of producers, at not less than the class prices specified in Paragraph B, plus the weighted average premium and butterfat differentials set forth in Paragraph B, Sections 5 and 6, to producers by such distributors.

3. Errors in Payment - Errors in making the payments prescribed in this Paragraph shall be corrected not later than the date for making payments next following the determination of such errors.

G. Regulation No. 1, shall apply only to distributors located within the Arlington-Alexandria Area, who purchase milk and/or cream from producers or associations of producers.

## REGULATION NO. 2
## RETAIL AND WHOLESALE SELLING PRICES

THE FOLLOWING SCHEDULE OF MINIMUM PRICES SHALL PREVAIL IN THE ARLINGTON-ALEXANDRIA SALES AREA, EXCLUSIVE OF THE SALVAGE OR REDEMPTION VALUE OF ANY CONTAINER IN WHICH ANY MILK, AND/OR CREAM OR OTHER PRODUCT LISTED HEREIN IS DELIVERED TO A PURCHASER.

| | | Retail | Wholesale |
|---|---|---|---|
| A. | **Milk, Cultured Wholemilk, Homogenized Milk 3.25-4.25% butterfat, and Cultured Buttermilk containing more than 1.5% butterfat** | | |
| | Gallons - bulk | | .67 |
| | Quarts - single quart delivery | .20½ | .18 |
| * | Quarts - three-quart delivery | .19½ | .18 |
| | Pints | .12 | .10½ |
| | Half-pints | .063/4 | .053/4 |
| B. | **Milk, Cultured Wholemilk, Homogenized Milk 3.25-4.25% butterfat, and Cultured Buttermilk containing more than 1.5% butterfat** (sold through stores) | | |
| | Half-gallons - delivered in two-quart containers | .37 | |
| | Quarts | .18½ | |
| C. | **Milk 4.26-5.5% butterfat - including Jersey and Guernsey Milk** | | |
| | Gallons - bulk | | .77 |
| | Quarts - single quart delivery | .22½ | .20½ |
| * | Quarts - three-quart delivery | .21½ | .20½ |
| | Pints | .13 | .11½ |
| | Half-pints | .07 | .06½ |
| D. | **Milk 4.26-5.5% butterfat - including Jersey and Guernsey Milk** (sold through stores) | | |
| | Half-gallons - delivered in two-quart containers | .41 | |
| | Quarts | .20½ | |
| E. | **Vitamin "D" Homogenized Milk 3.25-4.25% butterfat** | | |
| | Gallons - bulk | | .67 |
| | Quarts - single quart delivery | .21½ | .19½ |
| * | Quarts - three-quart delivery | .20½ | .19½ |
| | Pints | | .11 |
| | Half-pints | | .053/4 |
| F. | **Vitamin "D" Homogenized Milk 3.25-4.25% butterfat** (sold through stores) | | |
| | Half-gallons - delivered in two-quart containers | .39 | |
| | Quarts | .19½ | |
| G. | **Cultured Skim Milk and/or Buttermilk (containing less than 1.5% butterfat)** | | |
| | Gallons - bulk | | .48 |
| | Quarts | .16½ | .14½ |
| | Pints | | .081/4 |
| | Half-pints | | .05 |
| H. | **Cultured Skim Milk and/or Buttermilk** (sold through stores) **(containing less than 1.5% butterfat)** | | |
| | Half-gallons - delivered in two-quart containers | .29 | |
| | Quarts | .14½ | |

* See Paragraph N

| | Retail | Wholesale |
|---|---|---|
| I. CHOCOLATE OR OTHER FLAVORED MILKS OR DRINKS (TO CONTAIN NOT LESS THAN 3% BUTTERFAT) | | |
| GALLONS - BULK | | .67 |
| QUARTS | .20½ | .18 |
| PINTS | .12 | .10½ |
| HALF-PINTS | .063/4 | .053/4 |
| J. CHOCOLATE OR OTHER FLAVORED MILKS OR DRINKS (SOLD THROUGH STORES) (TO CONTAIN NOT LESS THAN 3% BUTTERFAT) | | |
| HALF-GALLONS - DELIVERED IN TWO-QUART CONTAINERS | .37 | |
| QUARTS | .18½ | |
| K. CREAM 18-22% BUTTERFAT (SWEET OR SOUR) | | |
| GALLONS - BULK | | $2.40 |
| QUARTS | .65 | .60 |
| PINTS | .37 | .33 |
| HALF-PINTS | .20 | .18 |
| L. CREAM 33-38% BUTTERFAT (SWEET OR SOUR) | | |
| GALLONS - BULK | | $4.64 |
| QUARTS | $1.26 | 1.16 |
| PINTS | .72 | .64 |
| HALF-PINTS | .39 | .34 |
| M. HALF AND HALF 11-13% BUTTERFAT | | |
| GALLONS - BULK | | $1.54 |
| QUARTS | .43 | .39 |
| PINTS | .25 | .22 |
| HALF-PINTS | .14 | .12 |

N. THE QUANTITY PRICES PRESCRIBED IN PARAGRAPHS A, C AND E, OF THIS REGULATION FOR THE THREE-QUART DELIVERIES, SHALL NOT APPLY EXCEPT WHERE SUCH THREE-QUART PURCHASES ARE EQUIVALENT TO THREE QUARTS PER DAY FOR A DELIVERY PERIOD OF NOT LESS THAN 7 DAYS.

O. THE SCHEDULES OF PRICES OF MILK "SOLD THROUGH STORES" CONTAINED IN PARAGRAPHS B, D, F, H AND J, OF THIS REGULATION, SHALL APPLY ONLY TO SALES OF MILK MADE TO AND BY STORES, HAVING A MERCHANT'S LICENSE, WHICH SELL THE MILK, IN THE ORIGINAL CONTAINERS, TO BE CONSUMED EITHER ON OR OFF THE PREMISES, AND TO LICENSED DISTRIBUTORS OF MILK MAKING RETAIL SALES IN THE SALES ROOM OF THEIR DISTRIBUTING PLANT.

## REGULATION NO. 3
## RULES OF FAIR PRACTICE

EACH DISTRIBUTOR IN THE ARLINGTON-ALEXANDRIA SALES AREA SHALL OBSERVE THE FOLLOWING RULES OF FAIR PRACTICE:

A. THE SALE OF ARTICLES UNDER REGULATION NO. 2, SHALL BE IN CONTAINERS OR BOTTLES OF THE SIZE SPECIFIED, AND NO MILK AND/OR CREAM CAN BE SOLD IN EXCESS OF OR BELOW THE BUTTERFAT CONTENT AS IS PROVIDED IN PARAGRAPHS A, B, C, D, E, F, G, H, I, J, K, L AND M OF REGULATION NO. 2.

B. THE RETAIL PRICES SHALL APPLY TO ALL SALES AND DELIVERIES TO CONSUMERS WHERE DELIVERIES ARE MADE EITHER IN PERSON OR AT THEIR RESIDENCES, EXCEPT IN MARKETS WHERE THE "AGRICULTURAL MARKETING ADMINISTRATION SCHOOL MILK PROGRAM" HAS BEEN ESTABLISHED, HALF-PINT BOTTLES OF MILK MAY BE SOLD AT THE AGRICULTURAL MARKETING ADMINISTRATION'S PRICE TO SCHOOL CHILDREN FOR CONSUMPTION ON THE PREMISES.

C. THE WHOLESALE PRICES LISTED IN REGULATION NO. 2, SHALL APPLY TO SALES AND DELIVERIES TO HOTELS, RESTAURANTS, STORES, HOSPITALS, SCHOOLS, LICENSED BOARDING HOUSES, AND OTHER ESTABLISHMENTS HAVING MERCHANT'S LICENSE, WHERE MILK IS RESOLD FOR CONSUMPTION EITHER ON OR OFF THE PREMISES.



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D. Each licensee, delivering milk in glass bottles, shall require and collect from each wholesale purchaser a deposit charge of not less than One Cent (1¢) on each bottle. Any person, firm, or corporation selling milk, delivered in glass bottles, to retail customers for consumption off the premises, except on home delivery made by licensed distributors of milk, shall charge not less than One Cent (1¢) on each bottle, which said deposit shall be refunded upon the return of such bottles.

E. Nothing in this Regulation shall be construed to prohibit a distributor from submitting bids asked for by any governing body of any municipality, county, state, or federal government, including relief agencies; charitable institutions; or any agency supported entirely by the above-mentioned governing bodies. Provided, however, that the producers must receive the established price for milk and/or cream sold on such bids, as set up under Regulation No. 1, governing the particular sales area in which such institutions and/or agencies may be operating.

F. No distributor, his officers, agents, or employees, shall engage in, permit or encourage any method or device in connection with the sale of milk and/or cream, whereby any milk and/or cream is sold or offered for sale at a price or prices less than those set up under Regulation No. 2, whether by discount, rebate, redeemable certificates or stamps, free service, gift or loan of any container having any salvage value, or any merchandise, or combination price for such milk and/or cream with its container or merchandise, or other commodity sold or offered for sale; or by credit beyond the usual course of business or other valuable consideration, whether moving from such distributor or otherwise, the result of which will be to reduce the net price to purchasers below the minimum prices hereby prescribed in Regulation No. 2.

G. Distributors are prohibited from indulging in any of the following practices:

1. Paying for advertising, directly or indirectly, displayed in any place of business of a milk customer, or on the premises of any milk customer or prospective milk customer, advertising milk or any other commodity sold or handled by a distributor, without first having obtained the written approval of the State Milk Commission or its duly authorized representative.

2. Joining with a milk customer in a radio program in which milk or other commodity of the distributor is advertised.

3. Providing a milk customer with any article of any character for use in handling milk or other commodity, or use of neon signs, either by sale, lease, gift or loan, except the placing of individual insulated containers for use by retail customers, which containers shall remain the property of the distributor.

4. Entering into a contract or agreement with any person, firm or corporation, by which the distributor agrees, or undertakes to distribute, or to assist in the distribution of any prize or premium to the customers of the distributor, or by way of an advertisement of the milk or any other commodity handled by the distributor.

5. Using branded crates, or bottles, for the purpose of bottling and distributing milk therein, having thereon the name of any other licensee, painted, etched, blown, or otherwise imprinted in or on such crates or bottles.

H. A producer-distributor, or distributor, may, however, advertise his product by giving a free sample of one bottle of milk to a prospective customer for one time only, within a period of six months. A customer, as heretofore-mentioned, is limited to one person in a single household, and/or the proprietor, the manager, or purchaser, in an establishment buying or selling milk.

I. No person, firm, or corporation, shall deliver at retail, to another in the Arlington-Alexandria Sales Area, milk sold to such other or purchased for such other, at less than the price fixed by Regulation No. 2, whether the milk is delivered to purchasers from a fixed place of business within said market area, or is delivered from vehicles operating on regular routes within said market area over the public roads and streets of the Arlington-Alexandria Sales Area, or over both said roads and streets.

J. No person, firm, or corporation, shall solicit or accept orders for the sale or delivery of milk at retail within the Arlington-Alexandria Sales Area to purchasers therein, where the net price at which the order is to be filled is less than that fixed by Regulation No. 2.

K. Producers and Associations of Producers are prohibited from indulging in the following practices:

1. Offering milk and/or cream for sale whether in person or through his or its representative, where such milk and/or cream is used for fluid consumption, or accepting a price therefor, which is less than the price established for fluid milk and/or cream in these Regulations.

L. Regulation for the control of the wholesale and retail milk delivery.

1. It shall be a violation of the Rules and Regulations for a licensee, his officer, agent, or employee, to make delivery of milk, cream or any dairy product covered by Regulation No. 2, by any means of transportation or conveyance, for retail sale more frequently than once within a forty-eight hour period, beginning at 12:01 A.M., of any day; provided, however, that when and where the day of regular retail delivery falls on Sunday, the regular scheduled Sunday delivery may be made on Saturday after 12:01 P.M.

2. It shall be a violation of these Rules and Regulations for a licensee, his officer, agent or employee to make delivery of milk, cream or any dairy product covered by Regulation No. 2, for wholesale sales, as defined by Regulation No. 3, Paragraph C, to any wholesale customer on Sunday or more often than once within a twenty-four hour period, beginning at 12:01 A.M., for the six other days of the week; provided, however, that seven day per week wholesale delivery may be made to the armed forces of the United States and to hospitals; and provided further, that when one day's delivery to any wholesale customer exceeds the capacity of a single vehicle, additional vehicle delivery may be made on the same day and considered as one delivery for that customer.

3. Milk, cream or any dairy product covered by Regulation No. 2, delivered to or within any industrial plant, shipyard, construction project, factory, or office building in quantities of five quarts or more (or its equivalent) in any one day shall, for the purpose of this Regulation, be deemed a wholesale delivery irrespective of whether the milk so delivered is actually sold at wholesale or retail.

4. No licensee, his officer, agent, or employee shall make delivery of milk, or any dairy product covered by Regulation No. 2, other than cream and half and half, for retail sales in one-half pint containers.

5. No licensee, his officer, agent, employee or any other person shall make special delivery by any means of transportation or conveyance of milk, cream or any dairy product covered by Regulation No. 2, for wholesale and retail sales.

6. No licensee, his officer, agent, employee, or any other person shall make to retail customers call-backs for any purpose, other than for collecting monies, within the forty-eight hour period, beginning at 12:01 A.M., in which delivery has been made; nor shall they make to wholesale customers call-backs for any purpose, other than for collecting monies, within the twenty-four hour period, beginning at 12:01 A.M., in which delivery has been made.

7. Each licensee, his officer, agent or employee shall charge a deposit of twenty-five cents (25¢) on all milk cases or crates delivered to wholesale purchasers. Deposits are redeemable upon return of the milk crates or cases.

8. Provided, however, the sale of milk, cream or other dairy products covered by Regulation No. 2, over the counter direct to the consumer for on premises consumption is exempt from the provisions of Section 4, Paragraph L.

## REGULATION NO. 4
## GRANTING AND REVOKING LICENSES

A. All licenses now issued shall remain in effect until surrendered or revoked by the Commission for failure to comply with the Rules and Regulations.

New applicants for a distributor's license must make application and receive a license before handling or selling milk and/or cream for fluid consumption. Applications shall be submitted on Form SMC-1, and mailed direct to the State Milk Commission, Richmond.

B. No license shall be granted to a person not now engaged in business as a milk distributor, except for the continuation of a now-existing business, and no license shall be granted to authorize the extension of an existing business, by the operation of an additional plant, or other new or additional facility, unless the Commission is satisfied that the applicant is qualified by character, experience, financial responsibility and equipment to properly conduct the proposed new business, or the extension of an existing business by the operation of an additional plant, or other new or additional facility, that the issuance of such license will not tend, in the opinion of the Commission to a destructive competition in the already adequately served market and that the issuance of such license is in the public interest.

C. The Commission may decline to grant a license, or may suspend, or revoke a license already granted, upon due notice to the licensee, or applicant and after a hearing where the Commission is convinced from the evidence, of the existence of any of the following reasons or causes:

1. That the applicant for a license, or the licensee has knowingly made false statement, or inaccurate report of a material fact, either to the Local Board or to the Commission.

2. That the applicant for a license, or the licensee is insolvent, or has made a general assignment for the benefit of creditors or that a money judgment has been secured against such applicant or licensee, upon which execution has been returned wholly or partly unsatisfied.

3. That the licensee has knowingly violated any one or more of these Regulations.

4. The sale of milk and/or cream by a distributor or a producer-distributor to anyone other than to a distributor or producer-distributor operating exclusively within the sales area, without the consent of the State Milk Commission, shall constitute a ground for the revocation of the license of a distributor or producer-distributor.

D. At least ten days' notice shall be served upon the applicant or licensee of the reason or cause for refusing to grant or renew a license, or before suspending or revoking a license in which notice shall be stated the time and place of the hearing and the reason therefor.

## REGULATION NO. 5
## RECORDS AND REPORTS OF DISTRIBUTORS AND PRODUCER-DISTRIBUTORS

A. Distributors and/or producer-distributors shall at all times keep such records as will enable the Commission, or its representative, to accurately determine the disposition of all milk and/or cream received from all sources, distributed and/or handled by him; the butterfat test thereof, and the date such tests are made of each producer's deliveries. These records must show the total receipts of all milk and/or cream from all sources. They must show the sales by units, the value of each group of units, showing both retail and wholesale sales, together with the butterfat test of each commodity sold, which record shall show daily transactions, summarized into a monthly total.

B. Each licensee shall furnish in detail to the Commission and/or to the Local Milk Board not later than the tenth day of each month completed Forms SMC-2 and 2A and such other reports that may be requested by the Commission and/or the Local Board. This information must be compiled from records of a permanent nature and these records shall be subject to audit and inspection by any authorized employee or agent of the Commission.

The information as reported by licensees on Form SMC-2A, shall be kept confidential and shall be subject to inspection only by the Chairman of the Local Milk Board, and the Secretary to the Board when so authorized by the Chairman thereof.

C. The Local Board shall furnish the Commission all the information as required on Form SMC-3, together with each Certificate of Deposit covering the amount shown on Form SMC-3, immediately after making a deposit in the designated State Depository.

## REGULATION NO. 6
## ASSESSMENTS

For the purpose of defraying the expenses of the State Milk Commission, there is hereby levied, and the Local Milk Board is hereby required to collect an assessment of One-half Cent (½¢) per cwt. on all milk and/or cream handled by distributors; and One-half Cent (½¢) per cwt. on all milk and/or cream sold by producers, which said One-half Cent (½¢), such distributors shall deduct from payments to be made to their producers and pay to the Milk Board.

Assessments for the expense of the Local Milk Board shall not exceed One Cent (1¢) per cwt. on all milk and/or cream handled by distributors, and One Cent (1¢) per cwt. on all milk and/or cream sold by producers.

EACH DISTRIBUTOR SHALL PAY TO THE MILK BOARD, ALL ASSESSMENTS LEVIED ON HIM, AND SHALL DEDUCT AND PAY TO THE MILK BOARD, ALL ASSESSMENTS LEVIED BOTH BY THE COMMISSION AND THE BOARD, ON EACH PRODUCER DELIVERING MILK TO HIM.

ALL ASSESSMENTS SHALL BE PAID NOT LATER THAN THE FIFTEENTH DAY OF EACH MONTH FOLLOWING THE PREVIOUS DELIVERY PERIOD, AND SHALL BE DEPOSITED IMMEDIATELY, IN THE DESIGNATED STATE DEPOSITORY TO THE TREASURER OF VIRGINIA, ON FORMS PROVIDED BY THE TREASURER.

ON ALL MILK SOLD BY ONE DISTRIBUTOR TO ANOTHER, COMMONLY CALLED "EXCHANGE MILK", THE FIRST DISTRIBUTOR SHALL BE RESPONSIBLE FOR THE ASSESSMENT.

FOR DETERMINING THE PROPER ASSESSMENT ON CREAM RECEIVED AS CREAM, CONVERT SUCH CREAM TO FOUR PER CENT (4%) MILK EQUIVALENT, IN ACCORDANCE WITH TABLE NO. 1, ATTACHED HERETO. ALL DISTRIBUTORS OPERATING IN CONTROLLED AREAS, SERVING CONTRACTS TO THE FEDERAL GOVERNMENT, OR ANY AGENCY THEREOF, AND MAKING DELIVERY THEREOF IN ANOTHER CONTROLLED AREA SHALL REPORT SUCH SALES AND PAY THE ASSESSMENT LEVIED THEREON IN THE AREA IN WHICH SUCH DELIVERY IS MADE.

## REGULATION NO. 7
## ELECTION OF LOCAL BOARD MEMBERS

IT SHALL BE THE DUTY OF THE CHAIRMAN OF THE LOCAL MILK BOARD TO CALL A MEETING WITHIN THIRTY DAYS AFTER JUNE FIRST OF EACH YEAR, TO HOLD AN ANNUAL ELECTION OF BOARD MEMBERS OF THE PRODUCER AND DISTRIBUTOR REPRESENTATIVES.

VOTING FOR THE RESPECTIVE MEMBERS OF THE LOCAL BOARD SHALL BE CONDUCTED ON THE BASIS OF VOLUME OF MILK AND/OR CREAM COMPUTED TO FOUR PER CENT (4%) MILK EQUIVALENT, PRODUCED OR DISTRIBUTED. PRODUCERS SHALL VOTE FOR PRODUCER REPRESENTATIVES ONLY; DISTRIBUTORS SHALL VOTE FOR DISTRIBUTOR REPRESENTATIVES ONLY; AND PRODUCER-DISTRIBUTORS SHALL VOTE FOR PRODUCER-DISTRIBUTOR REPRESENTATIVES ONLY. IN THE EVENT PRODUCER-DISTRIBUTORS ARE NOT ENTITLED TO A REPRESENTATIVE ON THE LOCAL BOARD, THEY SHALL VOTE THEIR PRODUCTION VOLUME FOR PRODUCER REPRESENTATIVES AND THEIR DISTRIBUTION VOLUME FOR DISTRIBUTOR REPRESENTATIVES.

## REGULATION NO. 8
## EXEMPTION

THE PROVISIONS OF THESE REGULATIONS SHALL NOT BE CONSTRUED AS APPLYING TO ANY PERSON KEEPING NOT MORE THAN THREE (3) COWS, NOTWITHSTANDING THE FACT HE SELLS SOME MILK, PROVIDED, HOWEVER, THAT ALL SUCH SALES ARE MADE OF MILK PRODUCED BY HIM AND THE MILK DELIVERED ON HIS PREMISES, DIRECTLY TO THE PURCHASER, IN CONTAINERS FURNISHED BY THE PURCHASER.

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MADE, ADOPTED AND POSTED FOR INSPECTION, AS HEREIN AMENDED, IN THE MAIN OFFICE OF THE COMMISSION, AND A CERTIFIED COPY THEREOF, ORDERED TO BE FILED, IN THE OFFICE OF THE COMMISSIONER OF AGRICULTURE, PURSUANT TO THE AUTHORITY VESTED IN THE COMMISSION, BY SECTION 3, OF THE MILK AND CREAM ACT, CHAPTER 357, ACTS OF ASSEMBLY, 1934, PAGE 558, AS AMENDED, THIS TWENTY-THIRD DAY OF MARCH 1950.

STATE MILK COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

/s

47

MARCH 23, 1950

# NOTICE

GENERAL ORDER - NO. 8, PERTAINING TO ASSESSMENTS TO BE LEVIED AND COLLECTED, DOES NOT APPLY TO THE ARLINGTON-ALEXANDRIA MARKET AFTER THE DATE OF THESE REVISED REGULATIONS, TO BECOME EFFECTIVE APRIL 1, 1950.

STATE MILK COMMISSION

John W. Owen

JOHN W. OWEN, SECRETARY

/B

TABLE NO. 1

FROM 3.3 TO 5.2 B.F. CONTENT REQUIRED PER GALLON OF CREAM FROM 11% TO 42% B.F. CONTENT

POUNDS OF MILK REQUIRED PER GALLON OF CREAM

| CREAM | B.F. LBS. PER GAL. | MILK PERCENT | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 3.3 | 3.4 | 3.5 | 3.6 | 3.7 | 3.8 | 3.9 | 4.0 | 4.1 | 4.2 | 4.3 | 4.4 | 4.5 | 4.6 | 4.7 | 4.8 | 4.9 | 5.0 | 5.1 | 5.2 |
| 11 | .942 | 28.55 | 27.71 | 26.91 | 26.17 | 25.46 | 24.79 | 24.15 | 23.55 | 22.98 | 22.43 | 21.91 | 21.41 | 20.93 | 20.48 | 20.04 | 19.63 | 19.22 | 18.84 | 18.47 | 18.12 |
| 12 | 1.027 | 31.12 | 30.21 | 29.34 | 28.53 | 27.76 | 27.03 | 26.33 | 25.68 | 25.05 | 24.45 | 23.88 | 23.34 | 22.82 | 22.33 | 21.85 | 21.40 | 20.96 | 20.54 | 20.14 | 19.77 |
| 13 | 1.112 | 33.70 | 32.71 | 31.77 | 30.89 | 30.05 | 29.26 | 28.51 | 27.80 | 27.12 | 26.48 | 25.86 | 25.27 | 24.71 | 24.17 | 23.66 | 23.17 | 22.69 | 22.24 | 21.80 | 21.38 |
| 14 | 1.197 | 36.27 | 35.21 | 34.20 | 33.25 | 32.35 | 31.50 | 30.69 | 29.92 | 29.20 | 28.50 | 27.84 | 27.20 | 26.60 | 26.02 | 25.47 | 24.94 | 24.43 | 23.94 | 23.47 | 23.02 |
| 15 | 1.282 | 38.85 | 37.71 | 36.63 | 35.61 | 34.65 | 33.74 | 32.87 | 32.05 | 31.27 | 30.52 | 29.81 | 29.14 | 28.49 | 27.87 | 27.28 | 26.71 | 26.16 | 25.64 | 25.14 | 24.65 |
| 16 | 1.367 | 41.42 | 40.21 | 39.06 | 37.97 | 36.95 | 35.97 | 35.05 | 34.18 | 33.34 | 32.55 | 31.79 | 31.07 | 30.38 | 29.72 | 29.09 | 28.48 | 27.90 | 27.34 | 26.80 | 26.29 |
| 17 | 1.451 | 43.97 | 42.68 | 41.46 | 40.31 | 39.22 | 38.18 | 37.21 | 36.28 | 35.39 | 34.55 | 33.74 | 32.98 | 32.24 | 31.54 | 30.87 | 30.23 | 29.61 | 29.02 | 28.45 | 27.90 |
| 18 | 1.535 | 46.52 | 45.15 | 43.86 | 42.64 | 41.49 | 40.39 | 39.36 | 38.38 | 37.44 | 36.55 | 35.70 | 34.89 | 34.11 | 33.37 | 32.66 | 31.98 | 31.32 | 30.70 | 30.10 | 29.52 |
| 19 | 1.619 | 49.06 | 47.62 | 46.26 | 44.97 | 43.76 | 42.61 | 41.51 | 40.48 | 39.49 | 38.55 | 37.65 | 36.80 | 35.98 | 35.20 | 34.45 | 33.73 | 33.04 | 32.38 | 31.75 | 31.13 |
| 20 | 1.702 | 51.58 | 50.06 | 48.63 | 47.28 | 46.00 | 44.79 | 43.64 | 42.55 | 41.51 | 40.52 | 39.58 | 38.68 | 37.82 | 37.00 | 36.21 | 35.46 | 34.73 | 34.04 | 33.37 | 32.73 |
| 21 | 1.786 | 54.12 | 52.53 | 51.03 | 49.61 | 48.27 | 47.00 | 45.79 | 44.65 | 43.56 | 42.52 | 41.53 | 40.59 | 39.69 | 38.83 | 38.00 | 37.21 | 36.44 | 35.72 | 35.02 | 34.35 |
| 22 | 1.869 | 56.64 | 54.97 | 53.40 | 51.92 | 50.51 | 49.18 | 47.92 | 46.72 | 45.59 | 44.50 | 43.47 | 42.48 | 41.53 | 40.63 | 39.77 | 38.94 | 38.14 | 37.38 | 36.65 | 35.94 |
| 30 | 2.529 | 76.64 | 74.38 | 72.26 | 70.25 | 68.35 | 66.55 | 64.85 | 63.22 | 61.68 | 60.21 | 58.81 | 57.48 | 56.20 | 54.98 | 53.81 | 52.69 | 51.61 | 50.58 | 49.59 | 48.63 |
| 31 | 2.612 | 79.15 | 76.82 | 74.63 | 72.56 | 70.59 | 68.74 | 66.97 | 65.30 | 63.71 | 62.19 | 60.74 | 59.36 | 58.04 | 56.78 | 55.57 | 54.42 | 53.31 | 52.24 | 51.22 | 50.23 |
| 32 | 2.694 | 81.64 | 79.24 | 76.97 | 74.83 | 72.81 | 70.89 | 69.08 | 67.35 | 65.71 | 64.14 | 62.65 | 61.23 | 59.87 | 58.57 | 57.32 | 56.13 | 54.98 | 53.86 | 52.82 | 51.81 |
| 33 | 2.776 | 84.12 | 81.65 | 79.31 | 77.11 | 75.03 | 73.05 | 71.17 | 69.40 | 67.71 | 66.10 | 64.56 | 63.09 | 61.69 | 60.35 | 59.06 | 57.83 | 56.65 | 55.52 | 54.43 | 53.38 |
| 34 | 2.858 | 86.61 | 84.06 | 81.66 | 79.38 | 77.24 | 75.21 | 73.28 | 71.45 | 69.71 | 68.05 | 66.47 | 64.95 | 63.51 | 62.13 | 60.81 | 59.54 | 58.33 | 57.16 | 56.04 | 54.96 |
| 35 | 2.940 | 89.09 | 86.47 | 84.00 | 81.67 | 79.46 | 77.37 | 75.38 | 73.50 | 71.71 | 70.00 | 68.37 | 66.82 | 65.33 | 63.91 | 62.55 | 61.25 | 60.00 | 58.80 | 57.65 | 56.54 |
| 36 | 3.022 | 91.58 | 88.88 | 86.34 | 83.94 | 81.68 | 79.53 | 77.49 | 75.55 | 73.71 | 71.95 | 70.28 | 68.69 | 67.16 | 65.70 | 64.30 | 62.96 | 61.67 | 60.44 | 59.25 | 58.12 |
| 37 | 3.104 | 94.06 | 91.29 | 88.69 | 86.22 | 83.89 | 81.68 | 79.59 | 77.60 | 75.71 | 73.90 | 72.19 | 70.55 | 68.98 | 67.48 | 66.04 | 64.67 | 63.35 | 62.08 | 60.86 | 59.69 |
| 38 | 3.185 | 96.52 | 93.66 | 91.00 | 88.47 | 86.08 | 83.82 | 81.67 | 79.62 | 77.68 | 75.83 | 74.07 | 72.38 | 70.78 | 69.24 | 67.77 | 66.36 | 65.00 | 63.70 | 62.45 | 61.25 |
| 39 | 3.267 | 99.00 | 96.09 | 93.34 | 90.75 | 88.30 | 85.97 | 83.77 | 81.68 | 79.68 | 77.79 | 75.98 | 74.25 | 72.60 | 71.02 | 69.51 | 68.06 | 66.67 | 65.34 | 64.06 | 62.83 |
| 40 | 3.348 | 101.45 | 98.47 | 95.66 | 93.00 | 90.49 | 88.11 | 85.85 | 83.70 | 81.66 | 79.71 | 77.86 | 76.09 | 74.40 | 72.78 | 71.23 | 69.75 | 68.33 | 66.96 | 65.65 | 64.38 |
| 41 | 3.429 | 103.91 | 100.85 | 97.97 | 95.25 | 92.68 | 90.24 | 87.92 | 85.73 | 83.63 | 81.64 | 79.74 | 77.93 | 76.20 | 74.54 | 72.96 | 71.44 | 69.98 | 68.58 | 67.24 | 65.94 |
| 42 | 3.510 | 106.33 | 103.24 | 100.29 | 97.50 | 94.86 | 92.37 | 90.00 | 87.75 | 85.61 | 83.57 | 81.63 | 79.77 | 78.00 | 76.30 | 74.68 | 73.13 | 71.63 | 70.80 | 68.82 | 67.50 |

EXAMPLE:

DETERMINING THE FACTOR FOR 4.05% MILK
42.55 LBS. 4% MILK EQUIVALENT TO ONE GALLON OF 20% CREAM
41.51 LBS. 4.1% MILK EQUIVALENT TO ONE GALLON OF 20% CREAM

1.04 LBS. OF MILK DIFFERENCE IN 4.0% AND 4.1%
DIVIDE 1.04 BY 10 WHICH EQUALS POINTS OF TENTHS
THIS GIVES .104 LBS. FOR EACH 1/100%
MULTIPLY .104 BY 5 = .520 TO BE SUBTRACTED
THEREFORE 42.55 - .520 = 42.03 LBS. OF MILK TESTING
4.05% REQUIRED IN ONE GALLON OF 20% CREAM

[fol. 45] IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

[Title omitted]

ANSWER—filed March 15, 1951

The answer of the State Milk Commission to a petition exhibited against it in the Circuit Court of the City of Richmond by the County Board of Arlington County, Virginia, and others.

For answer to said petition the said State Milk Commission, reserving all just exceptions to such Petition, answers and says:

1. The petition for appeal is made pursuant to Section 3-371 of the Code of Virginia and involves the Milk and Cream Act of 1934, as amended.

2. The respondent is not advised as to the allegations contained in paragraph 2 of the petition and neither denies nor affirms the facts set forth therein.

3. The respondent admits that by order, designated "Arlington-Alexandria Market-Order No. 4", the retail and wholesale price of milk and cream in Arlington County was increased, but neither denies nor affirms the other allegations set forth in paragraph 3 of the petition.

[fol. 46] 4. The respondent denies the allegations found in paragraph 4 of the petition and says that the aforesaid order was issued after a legal notice of public milk hearing was given. Answering further the respondent says that such notice was published in eleven newspapers having a circulation in the Arlington-Alexandria market and clearly brought in issue the matter of increasing milk and cream prices.

5. The respondent neither denies nor admits the allegations of paragraph 5 of the petition.

6. The respondent denies the allegations found in paragraph 6 of the petition. Answering further the respondent expressly denies that it prohibits shipments of milk from other states.

7. The respondent admits the allegations of paragraph 7 of the petition.



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8. The respondent admits the statement found in paragraph 8 of the petition.

9. The respondent denies each and every allegation and statement found in paragraph 9 of the petition. Answering further the respondent says that the order designated as the "Arlington-Alexandria Market-Order No. 4" is supported by the evidence produced at the hearing and by its finding of fact.

And now, having fully answered the petition, the respondent prays to be hence dismissed with its reasonable costs by it in this behalf expended.

State Milk Commission, By (S.) J. Lindsay Almond, Jr., Attorney General, Henry T. Wickham, Assistant Attorney General.

(File endorsement omitted.)

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[fol. 47] Certificate of service (omitted in printing)

[fol. 48] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

Re: The County Board of Arlington County, Virginia, a body corporate; et als., v. State Milk Commission.

MEMORANDUM OPINION—filed September 26, 1951

Gentlemen:

After due consideration of the petition for appeal, the answer thereto, the record certified to the court by the State Milk Commission, the oral argument and memoranda submitted by counsel, the court is of opinion that the contention of the petitioners that the order of the commission designated as Arlington-Alexandria Market Order No. 4, increasing milk prices was unreasonable and capricious, because it was issued after notice and hearing which did not give actual notice or bring in issue the matter of increasing prices and that the issue presented by the producers and considered at the hearing was limited to the

question whether the seasonal reduction should occur, is without merit. The notice of the public milk hearing reads in part "* * * for the purpose of considering the entire price structure concerning the sale of milk and to consider an adjustment in any or all prices of the sale of milk for the following markets, who will be heard in the order listed, Arlington-Alexandria, Manassas, Fredericksburg * * *". The record discloses that said notice of hearing was duly published in eleven newspapers having circulation in the [fol. 49] milk area. As to the contention that the issue was limited to the question whether the seasonal reduction should occur, the court is of opinion that after having given the above required notice of hearing and having conducted said hearing the commission had authority to raise, lower or refuse to change the price of milk.

In regard to the second contention of the petitioners that the State Milk Commission is without authority or jurisdiction to fix the prices of milk moving directly in interstate commerce, attention is directed to Section 3-371 (3) of the Code of Virginia, 1950, which provides in part that in an appeal to this court from an order of the State Milk Commission, the case shall be heard upon the record certified to the court by the commission. The defendant by counsel contends that there is no evidence in the record that milk passes in interstate commerce and consequently there is no factual basis for a consideration of the question of interstate commerce by this court. As the record is presently constituted, the court is of opinion that it should not consider this question.

The above quoted section of the Code further provides "* * * but the court may, in proper cases, remand the record to the commission for the taking of such further testimony as was not available upon the hearing appealed from, or such other testimony as the court shall provide may be taken".

The court is of opinion that this is a proper case in which to remand the record to the commission in order to permit the petitioners to offer material and relevant testimony in regard to the question of milk moving in interstate commerce. In light of additional testimony given, the commission should give consideration as to whether or not

Arlington-Alexandria Market Order No. 4 should be amended or revised. The commission shall certify and file with the court such additional testimony and if said order is amended or revised same shall also be filed with this court.

Upon presentation of a proper decree, same will be entered.

Your very truly, Harold F. Snead, Judge.

s/s

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[fol. 50] In the Circuit Court of the City of Richmond

[Title omitted]

Decree Remanding Cause—October 9, 1951

This cause came on this day to be heard upon the petition for appeal, the answer thereto, the record certified to the Court by the State Milk Commission, the memoranda submitted, and was argued by counsel.

Upon consideration whereof, it appearing to the Court that the notice preceding the Public Milk Hearing in the Arlington-Alexandria market area on January 11, 1951, was lawful and sufficient, it further appearing that the State Milk Commission had authority to raise, lower or refuse to change the price of milk in the Arlington-Alexandria market area, it further appearing that Arlington-Alexandria Market Order No. 4, increasing milk prices, was not unreasonable or capricious.

And it further appearing that the record is devoid of factual basis for a consideration of the question of interstate commerce as related to the Arlington-Alexandria market area, and that this is a proper case in which to remand the record to the State Milk Commission for the taking of material and relevant testimony in regard to the question of milk moving in interstate commerce as related to the Arlington-Alexandria market area.

It is, therefore, adjudged, ordered and decreed that the record be remanded to the State Milk Commission for the [fol. 51] taking of such additional testimony as offered by the petitioners, the defendant or any other interested party

relating to milk moving in interstate commerce in connection with the Arlington-Alexandria market area.

It is further adjudged, ordered and decreed that the State Milk Commission shall certify and file with the Court such additional testimony taken, and if said Order No. 4 be amended or revised, the same shall also be filed with this Court.

It is further adjudged, ordered and decreed that this cause be retained upon the docket with leave to the parties or either of them to make application to the Court for such other or further orders as are authorized by law.

Enter (S.) Harold F. Snead.

I ask for this: Thomas M. Miller, Assistant Attorney General, Attorney for Defendant.

Seen: (S.) Malcolm D. Miller, Attorney for Petitioners.

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[fol. 52] BEFORE THE STATE MILK COMMISSION

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, ET ALS.,

vs.

STATE MILK COMMISSION, Richmond, Virginia

In Chancery B.-643

SUPPLEMENTAL RECORD—filed January 2, 1952

Hearing October 9, 1951.

Hearing October 10, 1951.

(File endorsement omitted.)

[fol. 53] EXHIBIT No. 1

BEFORE THE STATE MILK COMMISSION

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, VIRGINIA

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate; and FLORENCE E. CANNON, Chairman, F. FREELAND CHEW, ALFRED E. FRISBIE, ROBERT W. COX, DANIEL A. DUGAN, Members of the County Board, Petitioners,

vs.

STATE MILK COMMISSION, Defendant

In Chancery B-643—STIPULATION

It is hereby stipulated and agreed by the petitioners and the defendant that, in accordance with the instructions and subsequent order of this Court in this suit remanding the record to the State Milk Commission for the taking of further testimony in regard to the question of milk moving in interstate commerce, the State Milk Commission will convene and take testimony on October 9, 1951, at 10:00 o'clock a. m., EST., at the George Mason Hotel, Alexandria, Virginia, in conjunction with the Public Milk Hearing, scheduled for the same date, which hearing and taking of testimony will be continued from day to day until completed. This stipulation will constitute notice of the hearing by the State Milk Commission for the taking of the testimony as directed by this Court.

This stipulation is entered into by counsel for petitioners with the understanding that representatives of distributors of milk in Arlington County, Virginia, which have plants in the District of Columbia, will be available for examination by petitioners' counsel at said hearing with respect to facts concerning movement of milk in interstate commerce.

The County Board of Arlington County Virginia, and the Members of the County Board, Individually, By Malcolm D. Miller, Counsel; State Milk Commission, By J. Lindsay Almond, Jr., Attorney General, Thomas M. Miller, Assistant Attorney General.

[fol. 54] **Exhibit No. 2**

Before the State Milk Commission

Commonwealth of Virginia

(Virginia Seal)

J. Lindsay Almond, Jr., Attorney General.
G. Stanley Clark, Kenneth C. Patty, D. Gardner Tyler, Jr., Walter E. Rogers, C. Champion Bowles, Henry T. Wickham, Frederick T. Gray, Assistants.

Office of the Attorney General

Richmond

October 8, 1951.

Honorable Virgil P. Randolph,
Member of State Milk Commission,
Richmond, Virginia.

In Re: County Board v. State Milk Commission—In Chancery B-643.

Dear Mr. Randolph:

In accordance with our conversation, I herewith deliver to you for the State Milk Commission a Stipulation forwarded to this office by Malcolm D. Miller, counsel for Petitioners.

I have affixed my signature to the Stipulation upon the condition that the Commission, in its discretion, may file or enter into a new Stipulation with counsel for the Petitioners after examining the conditions prior to the hearing on October 9, at Alexandria.

It is not contemplated that there will be any difficulty, as it appears that the counsel for Petitioners merely wants to be protected from going ahead with a hearing should there be no one there from Washington to discuss the Interstate Commerce phase.

Very truly yours, Thomas M. Miller, Assistant Attorney General.

M-p.

[fol. 55] **Exhibit 3**

**Before Commonwealth of Virginia State Milk Commission**

**The County Board of Arlington**

**v.**

**State Milk Commission and In the Matter of Arlington-Alexandria and Manassas Markets, Price Structure**

***Minutes of Public Hearing***

Statement of Mr. William Laehy on behalf of Maryland and Virginia Milk Producers Association, Alexandria, Virginia, October 9, 1951.

Before Mr. Virgil P. Randolph, Acting Chairman, Mr. E. L. Millner.

[fol. 56] Mr. Randolph: Ladies and Gentlemen, I am V. P. Randolph, Jr., of Richmond, the non-industry member of the State Milk Commission. This is Mr. E. L. Millner, the distributor member of the Milk Commission. Mr. Mark Turner, the Chairman and producer member, has disqualified himself because of a possible financial interest in the outcome of this hearing. This is in accordance with our policy, which has been approved by the Virginia Supreme Court of Appeals. Mr. John W. Owen, on my left, is Secretary. Mr. Fred Saunders is our Auditor.

If there are any preliminary motions before we go ahead, we will be glad to hear them at this time.

In a decision that we made as a result of a hearing last winter which ended up in the Circuit Court of the City of Richmond, involving the same question, the matter of interstate commerce was brought up, and the City Circuit Court remanded the matter for further evidence on the phase of interstate commerce. It might be that such evidence would be pertinent in this particular matter, too, and if that is so we will hear that and consider it in this meeting along with the previous hearing, but we will take that up at the conclusion of the hearing as to the pricing of milk.

Is that agreeable to you, Mr. Miller?

Mr. Miller: Yes, sir.

[fol. 57] Mr. Randolph: Before you begin, Mr. Leahy, I want the record to show that we are now taking up the feature of interstate commerce, which will apply not only to the case today, but also the proceeding that we had last January, which was appealed to the Richmond City Circuit Court, in which Mr. Malcolm Miller represented the petitioners, and in which case the Richmond City Circuit Court remanded the matter back to the State Milk Commission to have further evidence presented on that feature, so that either we or the City Circuit Court could take appropriate action on whatever evidence developed as to whether we were or were not interfering with interstate commerce.

Tomorrow, we shall take up the evidence on that, and because Mr. Leahy has to be away, we are now giving him the opportunity to make any remarks on that which he or his client wish him to make. The reason that we are "putting the cart before the horse" is because of the necessity of the case; that is, that we are listening to this legal argument before the facts are brought out, but I think that Mr. Leahy is perfectly familiar with the facts and there will not be any conflict, or substantial conflict, in the facts as he sees them and what will be brought out tomorrow.

Mr. Miller, have you any further statement to [fol. 58] make?

Mr. Miller: No. I presume that whatever I say will be said tomorrow. Is that correct?

Mr. Randolph: Yes, sir. It is just a question of time to give him an opportunity to be heard.

Mr. Leahy: Mr. Chairman, I take it that the Legislature in enacting the Milk and Cream Act had in mind carefully to avoid any conflict between the provisions of the Act which they were then about to enact into law and those of the Federal Constitution, and particularly that relating to interstate commerce, because under Section 14, entitled "Saving Clause" the Legislature provided:

> "No provision of this Act shall apply or be construed to apply to foreign or interstate commerce except insofar as the same may be effective pursuant to the

United States Constitution and to the laws of the United States enacted pursuant thereto."

In other words, the Legislature was well within its competency when it enacted the Milk and Cream Act and provided for fixing prices of milk to be sold in the State of Virginia. There can be no question but that the state [fol. 59] has that right within its police power. It had the right to impress a trust of public interest upon the production, distribution and sale of milk, and in doing so, and as one of the elements of that trust and that public interest, it had a right to set up a commission in order to determine upon investigation what the price of milk ought to be in the State of Virginia, because it specifically authorized the Commission to fix minimum wholesale and retail prices to be charged for milk in any market or markets and the prices to be charged for different grades of milk.

Now, there is nothing in the interstate commerce feature which distinguishes Arlington and Alexandria from any other market, because the Legislature never sought to control interstate commerce. It specifically exempted any pretense of control in the saving clause I have just read. It emphatically stated that no provision of the Act should apply to foreign or interstate commerce. Therefore, at no time has this Commission ever sought or assumed to fix prices of any milk in interstate commerce, but it has undoubtedly the right to fix the price of milk once the milk is sold in the State of Virginia, and that probably is as well illustrated in the case of *Highland Farms Dairy* vs. *Agnew,* which was decided as far back as 1937, as in any case that can be found. That was almost fifteen years [fol. 60] ago, when Judge Cardozo was on the bench and wrote the opinion, and you, Mr. Chairman, particularly, are familiar with the reputation and ability of that very noted Justice. The case went to the Supreme Court and practically every provision of the Act was assailed and attacked as unconstitutional, and more particularly that the Commission was without authority to deny a license to one High, and the Supreme Court sustained the Commission and in that opinion fixed the law.

Now, these were the facts in that case: The suit was for an injunction to restrain the members of the Commission (you gentlemen) from enforcing the statute and the regulations made thereunder.

Mr. Randolph: Was that a straight appeal to the Supreme Court from the District Court?

Mr. Leahy: Yes. It was an appeal by the plaintiffs from the decree of the District Court of the United States for the Eastern District of Virginia, dismissing the suit to enjoin enforcement of the state statute and regulations made thereunder for the fixing of minimum and maximum prices to be charged for milk and cream. I quote from the opinion:

> "The suit is for an injunction to restrain the members of the Commission from enforcing the statute or the regulations made thereunder. One of [fol. 61] the two plaintiffs (Highland Farms Dairy, Incorporated) which will be spoken of as 'Highland' has a creamery for the pasteurizing and treatment of milk at Washington in the District of Columbia. For that purpose it buys milk from farmers in Virginia and Maryland. Its entire output of bottled milk it sells to the other plaintiff, Luther W. High, who has retail stores in Virginia and elsewhere for the sale of ice-cream, milk, and other dairy products. A regulation adopted by the Commission on March 27, 1936, set up a market area, described as the Alexandria-Arlington Milk Market, within which High is engaged in business."

Now, High is the man who has retail stores in Virginia and elsewhere for the sale of milk, ice-cream and other dairy products.

> "Minimum prices prescribed for that area are in excess of the prices at which Highland had been selling to High and at which High had sold to the consumers. Each went on selling at the old prices. Neither made application for a license. In June, 1936, the Commission gave notice to High that it would proceed against him for an injunction if he refused compliance [fol. 62] with its orders. No proceedings against

Highland were begun or even threatened, the Commission taking the position that Highland was not subject to the prohibitions of the statute, its sales and purchases in Virginia being transactions in interstate commerce. In spite of this disclaimer, Highland joined with High in suing to enjoin the enforcement of the Act. A District Court of three judges, organized in accordance with Section 266 of the Judicial Code (28 U.S.C.A. Sec. 380), gave judgment for the defendants, with a comprehensive opinion to which little can be added. 16 Fed. Sup. 575. The case is here upon appeal.

"The power of a state to fix a minimum price for milk in order to save producers, and with them the consuming public, from price cutting so destructive as to endanger the supply, was affirmed by this court in Nebbia v. New York, 291 U.S. 502"——

May I pause there for a moment. Notice the emphasis on "minimum" and "producer."

"The power of a state to fix a minimum price for milk in order to save producers, and with them the consuming public, from price cutting so destructive as to endanger the supply * * *"

[fol. 63] Now, that is the argument that is made here today. In 1951 they want this price-cutting competition which they choose to color with that phrase which I mentioned before, "an open market, open competition."

May I say this, too, in connection with that statement: The reply argument was that this Act was passed in a time of depression, whereas, today we are in a time of inflation and, therefore, we should return to the price cutting "so destructive as to endanger the supply." The supply is the important thing.

This opinion was written in 1937, not in 1932, 1933, or 1934, in which the Nebbia case was re-affirmed and the philosophy of the Nebbia case maintained, and it has been maintained all the way down through.

"Appellants are not asking us to undo what was there done. They take the ground, however, that the

statute of Virginia is open to the objections that were inapplicable to the statute of New York. The present grounds of criticism will be considered one by one."

Now, first, they take up the point that the statute is invalid as an unlawful delegation of legislative authority, which was denied. Then they take up the second point:

"The statute is not invalid in its present applica- [fol. 64] tion by reason of a provision for the cancellation of the prices established for a market, if cancellation is requested by a majority of the producers and distributors in the area affected."

They denied that point. Then they came down to three:

"The statute does not lay a burden on interstate commerce. Argument to the contrary is built upon the definition of the word 'distributor' contained in Sec. 1. We learn from that section that distributors include 'persons where ever located or operating, whether within or without the Commonwealth of Virginia, who purchase, market, or handle milk for resale as fluid milk in the Commonwealth of Virginia.' This definition, we are told, takes in the plaintiff Highland, who buys milk and sells it in interstate commerce, and does so with the expectation that upon arrival in Virginia the milk will be resold. But Highland is not subject to the provisions of the Act, and so the Milk Commission has ruled. No matter what the definition of a distributor may be, sales are not affected by any restriction as to price unless made within the [fol. 65] boundaries of a designated market area. The sections quoted in the margin point fairly to that conclusion."

That is the section I have just read to the Commission.

"Highland in Washington may sell to High in Virginia, and High may buy from Highland, at any price they please. Not till the milk is resold in Virginia within a market area will the price minimum apply, and then only to the price to be charged on the resale.

> If there could be any doubt about this as a matter of construction, the doubt would be dispelled by the administrative practice and by the warning of the statute, expressed in Sec. 4, that operations in interstate commerce shall not be deemed to be affected. So also as to the requirement of a license expressed in Sec. 4. High needs a license to the extent that he sells at retail to consumers in Virginia. Highland does not need one, and the Commission is not asking it to apply for one, because its business as now conducted with persons in Virginia is interstate exclusively. Clumsy draftsmanship may have spread a fog about the section when [fol. 66] viewed in isolation or taken from its setting. The fog scatters when we recall the provisions of Sec. 14 and the administrative practice. Appellants' fears are visionary."

Further, on the argument that the statute was invalid for failure to prescribe the standards for granting licenses, or refusing them, that was denied, and the decree affirmed.

Mr. Randolph: Now, as I understand it, although we do not know until we hear from them, the claim is made or suggested that because the milk originates in Virginia and Maryland and is brought into Washington, is processed there by, say, Mr. Davison's concern, and then moves into Virginia, the milk has gone from one state to another to such an extent that when it comes to rest in Virginia we cannot regulate the retail price of that milk to the ultimate consumer. What have you to say about that?

Mr. Leahy: That is answered, Mr. Chairman, because I made the same argument in this case and the argument was not accepted.

> "One of the two plaintiffs (Highland Farms Dairy, Incorporated), which will be spoken of as 'Highland,' has a creamery for the pasteurizing and treatment of milk at Washington in the District of Columbia. For [fol. 67] that purpose it buys milk from farmers in Virginia and Maryland. Its entire output of bottled milk it sells to the other plaintiff, Luther W. High, who has retail stores in Virginia and elsewhere for the sale of ice-cream, milk, and other dairy products. A

regulation adopted by the Commission on March 27, 1936, set up a market area, described as the Arlington-Alexandria Milk Market, within which High is engaged in business. Minimum prices prescribed for that area are in excess of the prices at which Highland had been selling to High and at which High had sold to the consumers. Each went on selling at the old prices. Neither made application for a license. In June, 1936, the Commission gave notice to High that it would proceed against him for an injunction if he refused compliance with its orders."

And, as stated in the opinion, Highland in Washington could sell to High in Virginia and High could buy from Highland at any price they pleased.

"Not till the milk is resold in Virginia within a market area will the price minimum apply, and then only to the price to be charged on the resale. If there could be [fol. 68] any doubt about this as a matter of construction, the doubt would be dispelled by the administrative practice and by the warning of the statute, expressed in Sec. 14, that operations in interstate commerce shall not be deemed to be affected."

As soon as the milk got to High, although it was interstate milk produced in Maryland or Virginia and processed in the District of Columbia and then shipped over here to High—or let us substitute Safeway—shipped to Safeway and put on the shelf, that milk when sold must comply with the minimum price fixed by the Commission. We have an exact parallel to the case where Highland shipped to High here and the price applied on resale, but you did not attempt to fix what Highland should charge High, and that you did not do because you knew under Sec. 14 it was not under the jurisdiction of this Commission.

Mr. Randolph: We do not try to regulate any sales or transactions that occur outside of the Commonwealth.

Mr. Leahy: That is right. No one but your Commonwealth has authority to control that milk within the state. If it is within Virginia and the milk is here in the store, it is affected by whatever is done with that milk in the shape of

[fol. 69] selling the same. The District of Columbia, Maryland, West Virginia, or any other state has ceased to have any control over that—why? I say because control of that milk ceased when it was sold in the District of Columbia, Maryland, or West Virginia. Your control comes in when it comes over here from Maryland and then is presented for sale to Virginia inhabitants or to those within the market area which you have described and declared. That is where the police power of Virginia attaches to it. That is where it loses its interstate character. It becomes part and parcel of the general goods and chattels of the state, and when it is sold, then it must be sold in accordance with the regulations of the state in which it is then located and offered for sale.

Now, I do not know what the evidence may disclose tomorrow, but if it is within the picture as painted in *Highland* vs. *Agnew*, there isn't any doubt, there can't be any doubt about the authority of this Commission to fix the price at which the milk shall be sold, and this for the very reason, as stated in the Nebbia case and in this case, that this state had to take over that situation. There was a price cutting that was destructive. It did not destroy merely the price cutters and their immediate competitors: it went back of that and destroyed the suppliers of the milk, [fol. 70] and it became a public necessity of this area, the police power attached to it, and the right of a man to sell his milk at any price he chooses to sell it has to give way in the public interest and the public welfare, and the public welfare is advanced and protected by the production of the supply of milk far beyond the scene of the actual sale. Thus, we have the whole picture, the rationale and the philosophy of this milk regulation, and the police power of this great Commonwealth, and the whole case, it seems, has been decided within the framework of that decision. It is not a question of the movement of milk from the point of its production to the point of its distribution; it is the question presented, What is the character of that milk from a state or interstate standpoint at the time it is being offered for sale in the Commonwealth of Virginia? And that case, it strikes me, is decisive of the point. It is either interstate commerce or it is not, in accordance with what we

find to be the facts as the testimony develops them. But surely no sales can be transacted in the State of Virginia, where the transaction occurs in Virginia, where the sale is made in the State of Virginia, if it is not within that case.

Mr. Chairman, Mr. Whiteford loaned me that case. [fol. 71] He had it here. My office happens to be in the same building with him, and if you would like it overnight—because you will see him tomorrow—I will be only too happy to leave it with you and in your care tonight.

Mr. Randolph: Thank you, sir.

Mr. Leahy: Thank you, and thank you so much for this opportunity.

Mr. Randolph: Would you like to ask him any questions or say anything, Mr. Miller?

Mr. Miller: No. I think I will wait until tomorrow.

Mr. Randolph: It is your last chance, because he won't be here tomorrow.

Mr. Leahy: I think he will agree that is the law. That is the law and the facts distinguish it. Whether we agree with the law or not, we have to submit to it, unless we can develop facts which take it out from the law.

Mr. Randolph: I want the facts to come out, whatever they are.

In that event, I do not see anything further, and we shall adjourn until 9:30 tomorrow morning, at 815 15th Street, in Washington.

(Thereupon, the hearing was adjourned until the following morning at 9:30 o'clock at the office of Mr. [fol. 72] Roger Whiteford, Bowen Building, 815 15th Street, Washington, D. C.)

[fol. 72]

Attendance Register

| Name | Address | Representing |
|---|---|---|
| E. W. Robertson | Warrenton | |
| G. R. Gaines | " | |
| Harry M. Birsner | Culpeper | |
| Jack Wall | " | |
| W. B. Harrison | Herndon | |
| Otto Phillips | Washington, D. C. | |
| J. L. Flinn | Catharpin, Va. | |
| Mattielee Casper | " | |
| Frank D. Cox | Manassas | |
| Francis M. Lewis | " | |
| Wilm. N. Kline | Fairfax | |
| Edwin Lynch | " | |
| A. R. Cullen | Manassas | |
| Gordon Welsh | Purcellville | |
| O. R. Hersch | Manassas | |
| E. T. Swink | Blacksburg | |
| Hawkins Bros. | Lynchburg | |
| R. S. Howard, Jr. | " | |
| J. H. McDevitt | Culpeper | |
| John W. Owen | Richmond | Sec'y. State Milk Commission |
| Lester W. Huff | Nokesville | |
| Clay Wood | " | |

[fol. 73]

| | | |
|---|---|---|
| Wm. W. Cockerille | Herndon | |
| Sams & Marshall | Ashburn | |
| Clifford Tutwiler | Culpeper | |
| L. W. Kipps | Madison | |
| E. F. Willis | Culpeper | |
| James O. Yarger | Bristow | |
| Ted J. Shepherd | Nokesville | |
| Royal M. Minor | Elkwood | |
| E. M. Ufelder by R. G. Seeley | McLean | |
| L. S. Greene | Medland | |
| B. R. King | Warrenton | |
| W. C. Cole | Purcellville | |
| F. M. Cole | " | |
| Gerald J. Gloosman | Arlington | Arlington PUC |
| C. F. Clark | Culpeper | |
| E. W. Thompson | Woodbridge | |
| W. D. Troxell | Winston | |
| J. F. Hepner | Sterling | |
| C. P. Talbot | Springfield | |
| Owen R. Lewis | Arlington | |
| Paul Kincheloe | Burke | |
| E. L. Popkin | Alexandria | |
| J. D. Butzner, Jr. | Fredericksburg | |
| A. N. Smith | Purcellville, Va. | |
| J. V. Nichols | " | |

[fol. 74]

| | | |
|---|---|---|
| H. A. Young | | |
| Jeanne Rogers | Washington, D. C. | |
| Walker P. Burl | Catlett | |
| W. J. Andes | Bealeton | |
| A. J. Lee | Vienna | |
| C. J. McLain | Fredericksburg | |

| Name | Address | Representing |
|---|---|---|
| A. J. Andes | Bealeton | |
| Mark Turner | Herndon | Member, State Milk Commission |
| A. J. Richardson | Louisa | |
| H. D. Herst | McLean | |
| Florence C. Willis | Remington | |
| I. Fred Stine | Winchester | County Agent |
| R. S. Phifer | Lincoln | |
| J. F. Potts | Purcellville | |
| E. H. Potts | Round Hill | |
| C. R. Hope | Purcellville | |
| Clarence Hall | " | |
| George Da (illegible) | | |
| C. H. Clemens | Leesburg | |
| C. C. Lynn | | |
| Allen Bradley | | |
| George Damm | | |
| M. V. Davison | | |
| S. H. R. Fred | | |
| [fol. 75] | | |
| Mrs. Raymond Edwards | | |
| Roger Whiteford | | |
| Bernard M. Wise | | |
| E. C. Norman | Purcellville | |
| W. W. Turner | | |
| E. W. Thompson, Jr. | | |
| A. D. Williams | Winston | |
| Joe W. Ingram | Arlington | |
| D. M. Gray | Catlett | |
| B. C. Wilson | " | |
| Charles B. Gray, Jr. | Calverton | |
| J. L. Crittenden | " | |
| W. M. Cockerill | Purcellville | |
| W. F. Orricon | Lovettsville | |
| W. A. Thompson | Fairfax | |
| Harry M. Middleton | Herndon | |
| Charles R. Fenwick | Arlington | |
| M. H. Burchell | Alexandria | |
| Olive M. Hooker | Nokesville | |
| Wm. Wheeler | Manassas | |
| C. C. Lynn, Jr. | " | |
| Albert D. Carr | Waterford | |
| Harry S. Sommers | Paeonian Springs | |
| Ray E. Fields | Round Hill | |
| O. S. Kilby | Boston | |
| [fol. 76] | | |
| W. J. Smith | Culpeper | |
| Paul Terrell | Forest | |
| G. L. Harlow | Culpeper | |
| James H. Broyles | Brandy | |
| William Shumate | Calverton | |
| Theodate P. Wilson | Purcellville | |
| W. W. Sanford, Jr. | Orange | |
| Dr. J. H. Iden | Manassas | |
| F. C. Day | Calverton | |
| B. F. Salsbury | Fairfax | |
| Hildegarde Herforth | Alexandria | |
| B. Higgs Lewis | | |
| R. P. James | Purcellville | |

| Name | Address | Representing |
|---|---|---|
| S. B. Welsh | Leesburg | |
| Mrs. E. W. Howard | Washington, D. C. | Women's Clubs |
| A. Z. Patterson | Purcellville | |
| Patsy Patterson | " | |
| H. Ralph Fields | " | |
| E. O. Farmer | Lovettsville | |
| R. H. Rawlins | Washington, D. C. | |
| Harry M. Miller | Nokesville | |
| C. Carleton Walsh | Manassas | |
| Joseph E. Beard | Fairfax | |
| M. F. Beardsall | | |
| Mrs. Birdsall | | |

[fol. 77]

| | | |
|---|---|---|
| W. D. Montgomery | Forest | |
| W. A. Hite | Culpeper | |
| G. F. Hill | Orange | |
| Mrs. G. K. Cowne | Nokesville | |
| Paul R. Marsh | Catlett | |
| Fred Johnson | Alexandria | |
| S. J. Green | Midland | |
| E. W. Stillwell | Washington, D. C. | |
| Leslie Bell | Nokesville | |
| E. T. Hilldrup | Fredericksburg | |
| Mrs. A. N. Smith | Purcellville | |
| L. C. James | " | |
| R. S. Oliver | Annandale | |
| Henry Fletcher | Manassas | |
| Edith Rogers | | |
| Katharine B. Rogers | | |
| Charles Benedum | Round Hill | |
| Robert B. James | " " | |
| C. F. Yates | Griffinsburg | |
| Edmund Burke | Boston | |
| E. P. Obenshain, Jr. | Forest | |
| J. Roy Brown | Culpeper | |
| Robert Apperson | Culpeper | |
| Golder Shumate | Calverton | |
| T. T. Curtis | Orange | |

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| | | |
|---|---|---|
| W. A. Williams | Orange | |
| C. E. Kincer | Elkwood | |
| G. K. Cowne | Nokesville | |
| Paul R. Irvin | " | |
| Colvin Bros. | " | |
| J. E. ——— | Falls Church | |
| Robert H. Forman | Arcola | |
| T. C. Tutwiler | Culpeper | |
| E. M. Trevis | Catlett | |
| E. Forrest Lohr | Madison | |
| R. T. Jones | Aroda | |
| Hassell B. Leigh | Vienna | |
| J. C. Eller | Culpeper | |
| Mrs. T. J. Shepherd | Nokesville | |
| Richard E. Jones | Culpeper | |
| B. C. ——— | Richmond | |
| Fred N. ——— | Arlington | |
| C. K. Wilkerson | Alexandria | |
| T. J. Potts | Purcellville | |
| George C. Dickerson | Manassas | |

| Name | Address | Representing |
|---|---|---|
| D. Frank Slaughter | Mitchells | |
| Bernard Inskeep | Rapidan | |
| J. Louis Inskeep | Culpeper | |
| Clyde H. Weaver | " | |
| J. M. Hughes | Sterling | |
| [fols. 79–80] | | |
| S. K. Andes | Remington | |
| Leonard Grove | Midland | |
| J. Maynard Magruder | Arlington | |
| Malcolm D. Miller | " | |
| Ben F. Morgan, Jr. | Blacksburg | |
| Guy J. Nageotte | " | |
| John O. Hardesty | Berryville | |
| G. Eldon Dovell | Reliance | |
| Harold D. Menken | Upperville | |
| Ada W. Menken | " | |
| Mr. & Mrs. E. D. Smith | Ashburn | |
| Louis Caporaletti | Manassas | |
| Cash Caporaletti | " | |
| R. L. Milner | Newport News | |
| J. W. Hughes | Alexandria | |
| Dr. O. S. Martin | Lynchburg | |
| J. D. Gunter | Evington | |
| Carl Kincheloe | Manassas | |
| W. D. McNair | Herndon | |
| F. G. Nancy, Jr. | " | |
| J. H. Ferguson | Washington, D. C. | |
| A. L. Thompson | " | |
| F. G. Young | Herndon | |
| Mrs. J. E. Carroll | Falmouth | |
| Mrs. G. W. Ritter | Herndon | |
| Mrs. R. I. Arrington | " | |

[fol. 81] BEFORE THE STATE MILK COMMISSION

815 15th Street, Northwest, Washington, D.C.

Room 602, Bowen Building,

Wednesday, October 10, 1951

The above entitled matter came on for further hearing at 9:30 o'clock a.m., Commissioner V. P. Randolph, Jr., Acting Chairman, presiding.

Before:

V. P. Randolph, Jr., Commissioner (Acting Chairman), E. L. Millner, Commissioner.

Present:

Mark Turner, Chairman, John W. Owen, Secretary, F. J. Saunders, Jr., Auditor.

Appearances:

Malcolm P. Miller, Esq., for County Board of Arlington County.

Gerald Glassman, for Public Utilities Commission.

Roger J. Whiteford, Esq., and Bernard M. Wise, Esq., for Chesnut Farms Dairy.

Maurice V. Davison, Vice President, Chesnut Farms Dairy.

Robert H. Rawlins, Production Manager, Thompson's Dairy.

[fol. 82] Arthur B. Hanson, Esq., for Lucerne Milk Company.

E. W. Stillwell, Public Relations Counsel, Lucerne Milk Company.

M. H. Burchell, President, Alexandria Dairy Products Company.

William Blum, Esq., for Alexandria Dairy Products.

Bruce B. Derrick, Secretary-Treasurer, Maryland and Virginia Milk Producers Association.

[fol. 83] PROCEEDINGS

Commissioner Randolph: Gentlemen, this is a continuation of the hearing held yesterday at the George Mason Hotel in connection with a petition of certain distributors for the State Milk Commission to consider the price structure in the Arlington-Alexandria market and also the Manassas market, and also by agreement of Mr. Miller, counsel for the petitioner, and other interested parties, in the case of County Board of Arlington versus the State Milk Commission from the Circuit Court of the City of Richmond in which the said court remanded the matter to the State Milk Commission for further evidence with respect to interstate commerce.

The matter was determined to be held in Washington because most of the counsel and witnesses were in Washington and by agreement with Mr. Miller and others it was determined to hold this hearing here in the Bowen Building because of convenience of office space, and we do thank Mr. Whiteford very much for permitting us to use his office.

The purpose of this is to examine exactly how much of the milk in the Arlington-Alexandria market does flow in interstate commerce and whether or not in any way the regulations of the Milk Commission unduly hamper interstate commerce.

The City Circuit Court also requested the State Milk Commission to consider whether or not its regulations should be, in the light of the evidence to be produced, [fol. 84] amended in any way. For that reason we feel that not only evidence should be adduced showing the situation, but also arguments of counsel so that we could consider this last instruction of the City Circuit Court properly.

Mr. Miller concurs in the thought that perhaps the picture could best be presented, certainly as a beginning, by Mr. Whiteford, counsel for Chesnut Farms, to make a statement as to their operations, which would be considered as evidence, and then if further clarification of their operations is desired by any of the parties either he can be requested to amplify it or he can have one of the operating employees of the concern testify.

Is that agreeable, Mr. Miller?

Mr. Miller: Yes, I might say just by way of clarification that the decree of the court, of which I have a copy here, says, "such additional testimony as petitioners, defendants, or other interested parties relating to milk moving in interstate commerce in connection with the Arlington-Alexandria market area . . ."

The decree does not use the word "hamper" or the word "impede" or anything like that. It is just directed at finding out the facts as to the movement rather than as to whether there was any hampering or anything like that, but if anyone has any evidence of hampering, of course I think that would be relevant.

[fol. 85] Commissioner Randolph: We understood that part of your argument was that we do in some way or other hamper interstate commerce or otherwise control it improperly.

Mr. Miller: No. My contention goes a little further than that. My contention is that the Milk Commission does not have any jurisdiction over any direct movements in interstate commerce. The question of hampering is maybe part of it, but I do not think that the question of hampering is the principal question.

There are certain types of interstate commerce over which the State has no control. In other words, absolutely none. The courts are plain on that, and it is my contention that this is one of those types of movements, at least some of the movements are.

Commissioner Randolph: We feel that everybody should know exactly what your contentions are so that the proper evidence can be brought out to support that or to deny it, whatever the facts may be.

Could you start off, Mr. Whiteford, and make a statement which will be considered as part of the evidence by agreement of everybody as to the extent of your operations and then amplify it in any way that Mr. Miller or anybody else would want to have you.

Mr. Whiteford: Mr. Chairman and the Commission, my name is Roger J. Whiteford, practicing attorney in the [fol. 86] District of Columbia. I have represented the Chesnut Farms Dairy for approximately 30 years. In that

time I have been fairly familiar with its operation. I think that when I started to represent them they did not have any business in Virginia at all.

As of the present time, however, Chesnut Farms does do business in Virginia and has been doing so for, I would say, 25 years at least. At this time, according to the figures prepared by the accountant for the Virginia Commission taken from Chesnut Farms' own books, and in which we substantially concur, Chesnut Farms Dairy sold in the Arlington-Alexandria market 13.77 per cent of its total sales.

Chesnut Farms sold in Virginia 33.03 per cent of the total sales in this area. Chesnut Farms purchased from Virginia producers, that is, Virginia farms, 46.09 per cent of its total purchases. Chesnut Farms purchases milk from Virginia producers, from Maryland producers, and West Virginia producers.

Chesnut Farms purchased from Virginia in relation to the total Virginia purchases of distributors in this area 53.45 per cent, and the relationship of Virginia sales to Virginia purchases was 28.92 per cent.

It will thus be seen that a very substantial part of the business done in this area is done by Chesnut Farms and a very substantial part of its total purchases are made from [fol. 87] Virginia. It is true that Chesnut Farms brings that milk purchased in Virginia to its plant in the District of Columbia for processing. It has no processing or distributing plant in the area in question. Milk is processed in the plant in the District of Columbia and is then sent out by trucks to wholesale and retail routes in the Arlington-Alexandria market.

Chesnut Farms operates some 15 or 20 truck routes in this area. It sells the milk to many stores in this area, delivers to those stores, and sells it to them daily. When a truck goes to a wholesale outlet the transaction is made there because the quantities are varying in amounts that the stores and wholesale outlets purchase.

The driver does not know what that supply is or is to be each day until he gets there and makes the transaction with him there that day, and those collections are made daily. The store or the restaurant, as the case may be,

usually pays for it *in* daily to the driver on the spot. There are many doorstep deliveries. I do not know the number of thousands of houses to which Chesnut Farms delivers its products, but there are many of them, and they are constantly growing in amount.

Many of those purchases are made by the customer at the time the driver goes to the house. It is perfectly true that the majority of retail customers have a standing order to deliver a quart, two quarts, or a certain amount of [fol. 88] cream, but that is frequently changed, and the days of delivery of it are frequently changed.

A number of those customers do pay direct by check, sending their check into Washington to the Chesnut Farms Dairy. It is also true that many of them pay the drivers. In addition to that method of delivery and payment Chesnut Farms Dairy has a number of solicitors of business. They solicit the individual customer at his house and get him to agree to take milk from Chesnut Farms Dairy. They go to the wholesale establishments like restaurants, stores, and solicit business.

Chesnut Farms Dairy makes bids to supply milk to public institutions like schools and submits those bids in the area in question. I think at the present time Thompson's Dairy has the school contract, having been the successful bidder to deliver the milk for the contract period to public schools, having submitted the bid in the area and making the contract in the area and making the delivery in accordance with the contract to the schools daily or weekly as required.

Chesnut Farms Dairy aspired to do the same thing, but was not at this time the successful bidder, although it has at other times made delivery under bid contracts to these schools.

In addition to this Chesnut Farms frequently sends over additional trucks to supply trucks who go over with their load. If stores and restaurants buy more milk from the [fol. 89] truck driver this morning than he is able to supply, then a supplementary truck goes out from Chesnut Farms Dairy in response to a phone call to supply that truck driver, or various others, with additional supplies because he has oversold his capacity on that given day

by virtue of transactions that he has made over his load on that day.

For many years Chesnut Farms Dairy has been taxed in the State of Virginia by the State of Virginia on the basis of the business that it has done in this area. Many years ago we raised the question in behalf of Chesnut Farms Dairy as to whether we were doing business in Virginia. The State of Virginia Taxing authorities held that we were, and they have apportioned the volume of our business done in this area and taxed us accordingly.

I said that we did not own a plant or distributing station in the State of Virginia. We do own one vacant piece of real estate which I would not think, without anything else, constituted doing business, but I merely mention that we pay a real estate tax on that lot of $37.80.

We pay a franchise tax of $25. In the year 1950 we paid an income tax to the State of Virginia on business done in Virginia of $16,333. We paid for bus and store licenses $6,762.25 last year, and we have paid it for many years.

In further support of the contention that we do business in this area and do it in Virginia, it has been held [fol. 90] by the taxing authorities of the District of Columbia that they do not tax Chesnut Farms Dairy, that is, the District of Columbia, on the volume of business that we do in Virginia, nor do they tax it in the District of Columbia on the volume of business we do in Maryland.

The taxing authorities in the District have held that we are engaging in business in Virginia and therefore they exempt from our tax levy here in the District of Columbia the amount by which we do business in Virginia. That has been done by the taxing authorities here after full consideration of our tax liability to the District of Columbia.

It is rather an unusual position for a lawyer to be in to insist that his client is doing business in a jurisdiction where he has to pay taxes when if there were any possible way we could avoid that we would be very glad to do so. If Mr. Miller's contention is that we are engaged in interstate commerce and you gentlemen cannot under your Act fix the prices at which we must sell because it is a burden

on interstate commerce, I would suggest that he could by the same argument lift the $23,000 in taxes that we pay the State of Virginia for doing business over there.

We would indeed be very grateful if his contention would be supported.

Commissioner Randolph: I think that may very well be pertinent, but that is more or less argument rather than [fol. 91] a factual statement, and I thought that probably for a more orderly presentation we would confine ourselves entirely to just facts.

Mr. Whiteford: The amount of the tax is $23,000.

Commissioner Randolph: It is pertinent somewhere or other, so we will keep it in, but I thought possibly until we do get down to the argument, that sort of thing could be deferred for the time being.

Mr. Whiteford: I think that I have covered factually just how we do business over there and the volume of it, and if Mr. Miller has any question that he might wish to ask I would be glad to answer it. If I cannot, Mr. Maurice Davison, the Vice President of Chesnut Farms, is here to answer it.

Commissioner Randolph: I would like to ask possibly a few questions, but before that I would like to state that this table here that you referred to was prepared by our Mr. Saunders, offering March, 1951 for all the distributors in the metropolitan area who are licensed to do business in the Arlington-Alexandria market by the State Milk Commission.

These, you will notice, are percentages and not total volume. That under the Milk and Cream Act we consider as confidential business, which we cannot divulge. We did get those figures and we have prepared a table of them, but we are not going to make it of record unless the court so directs us, and we would then be glad of course to do so [fol. 92] because we feel it would be letting each distributor know what the other one is doing. We picked out March, 1951 as being as typical a month as we knew and which would reflect the true picture as far as it could as being typical of the average.

It was brought out yesterday, but I think it ought to be emphasized today for whatever it may be worth that all

your purchases of milk from producers are either at your plant in Washington, D. C., or your receiving station in Frederick, Maryland.

Mr. Whiteford: That is correct.

Commissioner Randolph: The sale is consummated in either of those two places. The milk is then processed and packaged either in glass or paper in Washington, D.C. in your plant there and then a certain portion of that milk, which shows up on this table and which is made part of the record, is then moved into Virginia and there sold either to retail or wholesale customers in Virginia, at which place the sales then occur; is that right?

Mr. Whiteford: That is correct. I would say that more than 95 per cent of it is processed in the District plant.

Commissioner Randolph: The milk that is purchased from the producers in Washington or in Frederick, which makes up your entire purchases, does not come under the jurisdiction of the Virginia State Milk Commission as far as you are advised?

Mr. Whiteford: I would say that the Virginia Milk [fol. 93] Commission has no jurisdiction over the price we pay for it either in the District of Columbia or in Maryland.

Commissioner Randolph: And the sale of milk to customers in Washington does not come under the Virginia State Milk Commission.

Mr. Whiteford: No, sir, it does not.

Commissioner Randolph: Has the practice been to consider the milk sold to customers either wholesale or retail, that is, to stores or to the doorstep customers, or to the schools, or otherwise, in Virginia to come under the regulations of the Virginia State Milk Commission?

Mr. Whiteford: Yes, sir, we have.

Commissioner Randolph: Do you want that amplified?

Mr. Miller: I would like to ask some questions.

Commissioner Randolph: Certainly.

Mr. Whiteford: I would like to say that apropos of the Chairman's suggestion that this was all in percentages so far as our sales in Virginia are concerned, if it would be of any additional help to the court or to counsel I would say that so far as our sales in Virginia being 13.77 per cent

of our total business, that that represents a very substantial amount dollar-wise, and while I do not wish to give the total dollar sales I would say you might well consider that it was at least a million dollars, in order to give some idea of the volume of business that we are doing there.

[fol. 94] Commissioner Randolph: You wish it were more?

Mr. Whiteford: Yes, sir, and it will be more eventually.

Commissioner Randolph: Mr. Rawlins, you represent Thompson's Dairy, do you not?

Mr. Rawlins: Yes, sir.

Commissioner Randolph: You have heard the statements just made by Mr. Whiteford. Do they represent the operations of your concern with the exception, of course, as to the percentages, which differences show up on the exhibits as prepared by Mr. Saunders?

Mr. Rawlins: They do. They are representative, yes, sir.

Commissioner Randolph: And they show the set-up of your plant?

Mr. Rawlins: They do.

Commissioner Randolph: And the method of doing business?

Mr. Rawlins: Yes, sir.

Commissioner Randolph: Do you have any receiving station?

Mr. Rawlins: We have no processing plants or receiving stations except the one located in the District.

Commissioner Randolph: So all of your purchases are in the District rather than in the District and Maryland?

[fol. 95] Mr. Rawlins: Yes, sir, all in the District.

Mr. Whiteford: Mr. Chairman, are you going to put this sheet in?

Mr. Miller: This percentage sheet is going to be part of the record.

Commissioner Randolph: We make that part of the record right now as an exhibit.

(The document referred to was received as Exhibit No. 5.)

Mr. Miller: I would like to ask some questions.

Could you tell me where the Chesnut Farms processing plant is located in the District of Columbia, that is, the street?

Mr. Davison: 2535 Pennsylvania Avenue, N. W.

Mr. Miller: And where is the Thompson's Dairy processing plant?

Mr. Rawlins: 2012 11th Street, N. W.

M r.Miller: Could you give me some sort of percentage or proportion roughly of your sales to the doorsteps in the Virginia area and what proportion to other outlets such as stores, schools, and so forth?

Mr. Whiteford: You mean dollar-wise that would be?

Mr. Miller: You can say 75 per cent or what it will be.

Mr. Davison: About 50 per cent is retail and 50 per [fol. 96] cent is wholesale.

Mr. Miller: About 50 per cent would be the door-step deliveries?

Mr. Davison: That is right.

Mr. Miller: About the same for Thompson's?

Mr. Rawlins: No, sir; I believe ours would be around 60 per cent to 65 per cent retail.

Mr. Miller: By retail you mean that I call door-step?

Mr. Rawlins: Yes, sir.

Mr. Miller: As to Chesnut Farms, I ride the bus a good many mornings past your plant, and I see these small home delivery trucks congregated around your plant on Pennsylvania Avenue. Is the milk being loaded there in those trucks that goes over to the Virginia door steps?

Mr. Whiteford: Yes.

Mr. Miller: And those trucks drive across the bridge, do they not?

Mr. Whiteford: I assume so.

Mr. Miller: And the store door deliveries are made from those trucks as they scatter out from the Virginia area?

Mr. Whiteford: They are bought, delivered, that is, sold and delivered from those trucks.

Mr. Miller: I will quarrel with your bigger conclusion as to where the sale was made. They deliver them.

Mr. Whiteford: They deliver them, that is right. I do

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[fol. 97] not want to have the admission that that is all the driver does.

Mr. Miller: Are Thompson's doorstep deliveries made in substantially the same way, that is, your delivery trucks load——

Mr. Rawlins: Load at our plant in Washington and drive across the bridge.

Mr. Miller: And scatter through the Arlington area and deliver to the doorstep?

Mr. Rawlins: They sell and deliver in Virginia.

Mr. Miller: Mr. Whiteford, what are the various methods by which business from the homes in Arlington that take this doorstep delivery come to you? How does the business come to you? What are the different ways?

Mr. Whiteford: It comes by reason of advertising, no doubt. It comes primarily, I think, by way of solicitation. We have solicitors, and our truck drivers are solicitors. Our swing men, our various men that we have, make a solicitation from door to door, and we advertise over in Virginia. You must remember that these truck drivers are paid on a commission basis, and they are better paid the more business they get, and they are really salesmen in their solicitation.

They will come to your store or your restaurant and urge you to buy exclusively perhaps. You must remember that these stores, many of them, handle milk of all the dis-[fol. 98] tributors or several of the distributors. The restaurants are frequently served milk of Chesnut Farms, or Embassy, as the case may be. The effort is on the part of each driver to try to get his milk in to the exclusion of the other. He wants to sell more and more milk all the time. He is constantly at work trying to sell.

Mr. Miller: When you obtain business by advertising I suppose you mean by that that some person will see your advertisement and being in the need of milk perhaps call you by telephone and ask you to start delivering; is that right?

Mr. Whiteford: I imagine we get some results from that advertising. The newspapers I am sure over there would assert that we do.

Commissioner Randolph: You would not advertise if you did not think you got some results from it.

Mr. Whiteford: That is right; we would not.

Mr. Miller: What proportion of your milk approximately is delivered on what you might call a pre-order basis, that is, the route man would know ordinarily how many quarts a customer is going to take that day?

Mr. Whiteford: I do not know whether Mr. Davison could estimate that or not, but I would say that 75 per cent of it to the doorstep.

Mr. Davison: That would be a good statement because while they do have standing orders they are increased and [fol. 99] decreased and cut off altogether by leaving a note in the box by anyone that goes away, so I think 75 per cent would be a fair estimate.

Mr. Whiteford: That is the estimate as to retail?

Mr. Davison: Yes.

Mr. Whiteford: When you come to wholesale delivery would it average 50 per cent?

Mr. Davison: I do not think so. We do not know what the stores take. They might take ten cases today and some rainy day they might only take one. We do not know what they are going to take until the truck gets there.

Mr. Miller: But you have a pretty good idea they are going to take some?

Mr. Davison: We hope so. Some days we take out a whole load of milk and bring back half of it. On other days we will have to send a feeder truck because they sold out.

Mr. Miller: Would that 75 per cent of standing orders correspond with your orders?

Mr. Rawlins: I think so on retail. As they pointed out on wholesale, I would say we could not figure much over 40 per cent. We try to outguess ourselves on rainy days and do not load our trucks so full on rainy days.

Mr. Miller: What proportion of your collections are made by mailing the remittance in the form of a check or otherwise to your District of Columbia office? Do you have [fol. 100] any rough idea, most of it, or what?

Mr. Whiteford: At wholesale it is practically all made in Virginia.

Mr. Miller: They pay cash or sign a receipt?

Mr. Rawlings: Yes, cash is true of our wholesale, C. O. D.

Mr. Miller: And for Chesnut Farms?

Mr. Whiteford: Yes.

What do you do with respect to your schools?

Mr. Rawlins: The schools mail their checks in, sometimes several months late.

Mr. Miller: How about the home deliveries? What is the method of making collections there?

Mr. Rawlins: Of course, the route salesmen, what we call our drivers—we have no drivers—we depend on our men on our trucks to be our salesmen, and they make up their own bills and leave their bills at the home. Sometimes the lady pays them right then. Sometimes she will put it out in the bottle the next morning or two or three mornings later.

Many times they will have an arrangement whereby they will call back the day after her husband is paid and in other instances they mail checks in to the dairy, and to break that down, I do not think I could intelligently unless I went back and checked them. I do not know the proportion that mail them in and those that pay the men.

[fol. 101] Mr. Miller: Is that about the way it is for Chesnut Farms?

Mr. Whiteford: That is about the way it is for Chesnut Farms except that perhaps we might guess that 50 per cent of it is sent in by check.

Mr. Davison: That would be only a guess, but on the volume of milk being sold as a whole, the fact that we sell about the same amount of wholesale as retail—that is all cash—and we know that we collect more cash than we get by check.

Mr. Miller: Would you say at least 50 per cent of your retail or doorstep payments are made by check, excluding the wholesale?

Mr. Davison: I do not think that they mail in that many. Of course, some are paid by check, but they hand them to the driver when he delivers the milk; save three cents postage.

Mr. Miller: There is one other question I wanted to ask Mr. Whiteford and perhaps the Thompson Dairy can answer the same question. Perhaps Mr. Derrick is really the best one to answer this question, but *it is* not true, Mr. Derrick, that from November, 1945 until March, 1947 the minimum prices for producers were regulated by the Secretary of Agriculture?

Mr. Derrick: It would be a longer time than that. It would be from February, 1940 to March 31, I think it was [fol. 102] 1947.

Commissioner Randolph: When did they have the Federal market?

Mr. Derrick: That would be the time.

Mr. Owen: Mr. Derrick, would that order be for the District of Columbia for quite a number of years and then later they were petitioned to enlarge their marketing area to include part of Virginia, which was then the Arlington-Alexandria area?

Mr. Derrick: That is true, so that I am not sure of the date when the Federal order encompassed the Virginia area.

Mr. Whiteford: I think we can agree that certainly the order was on in Virginia in 1945 through the date 1947. We had it in the District long before that.

Mr. Saunders: It was around 1945 that the order took effect over in Arlington and Alexandria.

Mr. Owen: The Commission was also operating in Arlington and Alexandria during the time that the Federal order was on the producer level.

Commissioner Randolph: Would this be correct: That in the early 1940's the Federal market order embraced Washington and about 1945 it was extended to embrace the Arlington-Alexandria area, and the marketing order was terminated in 1947?

Mr. Whiteford: March of 1947.

[fol. 103] Mr. Miller: As to that date I might state that filed with the original of the petition for appeal made on behalf of the Arlington County Board there is a copy of the order which applied the Federal milk regulation to the Alexandria-Arlington area, together with a certificate that it is true and correct from the Solicitor of the Department

of Agriculture, and I have a copy of both the certificate and the order here and it reads:

"Issued at Washington, D. C. this 26th day of October, 1945 to be effective on and after the third day of November, 1945."

Then there is likewise filed with the petition a certified copy of an order of the Secretary of Agriculture, effective March 31, 1947, which removes that regulation, so I think that will verify the dates.

Is it my understanding that your purchases from the producers are made in the District of Columbia except for some of Chesnut Farms at Frederick, Maryland? Is that correct?

Mr. Whit-ford: Well, the deliveries are f.o.b. District of Columbia.

Mr. Miller: You purchase it, do you, from one Association?

Mr. Whit-ford: The Association, as I understand it, is the selling agent for its members. We all have our own [fol. 104] individual list of shippers that ship milk to us. We have had shippers for 25 and 30 years and some of them as long as 40 years. They have been shipping to us that long and for many years none of them belonged to the Association and then in the thirties the bulk of them belonged to the Association, and the Association began to sell their milk for them to us, and we aim to keep our shippers. We have built them up over many years.

We have our own inspectors that go to their barns and we do everything we can to help them produce a higher quality of milk all the time and our relationship is with each individual shipper, but the Association is the selling agent for that shipper and we pay the Association.

Mr. Miller: Mr. Derrick, is it your understanding that the milk is bought from the individual producers, or from the Association?

Mr. Derrick: Just as Mr. Whiteford stated, that they have their field contact individual producers, as well as our field men, but the purchase is made from the Association as a representative agent for the producer.

Mr. Whiteford: The producer gives you written authorization to do that as a member?

Mr. Derrick: That is right.

Commissioner Randolph: I would like to interject this: You of course have no contract with the Association, but if you need any extra milk because of any unfor-seen [fol. 105] circumstances—because of Government contracts or because of various other things that may arise—it has been your policy in the past to have the Association as such furnish you with this extra milk that you may need. Where they get it is up to Mr. Derrick; is that right?

Mr. Whiteford: That is right, and on many occasions during the emergency, that is, during the war, for instance, Mr. Derrick went out and bought milk and the Association paid higher prices for that milk than they charged us in order to supply us with the milk.

In later times the Association was in a position where it just could not supply milk. We went out and canvassed the country to buy milk ourselves wherever we could get it. It has been purchased by the Association on a brokerage basis, on almost any kind of a basis, and certainly as it developed in the trial in the anti-trust case, the Association for a number of years sustained substantial losses on milk that it went out and bought and handled so that we might have a supply in this metropolitan area. I think that is true, is it not, Mr. Derrick?

Mr. Derrick: That is right. There is only one thing, Mr. Whiteford; I do not believe we bought it on a brokerage basis. I do not think we ever charged a brokerage fee for any member we bought for.

Mr. Whiteford: I could be incorrect about that. Maybe we did not pay a brokerage fee.

[fol. 106] Mr. Derrick: We delivered it to you at the purchase price and did sustain substantial losses in handling and so on.

Commissioner Randolph: Then, under ordinary circumstances any emergency milk is obtained through the Association if the emergency is such and milk is so scarce that you cannot get it through the Association, you get it as best you may from wherever you may as long as it gets the O.K. of the health authorities?

Mr. Whiteford: That is right. The Association very naturally has the biggest source of supply and most con-

tacts, and when we need milk we call on them. They are the people that have the contacts for supply. If we cannot get it from there, we get it from wherever we can get it. We get it from other branches, National Dairy, or we get it from individual shippers or milk brokers, wherever they happen to have it, provided it complies with the proper regulations.

Mr. Miller: Mr. Derrick, you can probably answer this question for me best. Am I correct in understanding that the deliveries of producers' milk to Virginia distributors are those that are marked with a hundred per cent in this first column of the exhibit?

Commissioner Randolph: Mr. Miller, we are going to have a man from Virginia, a 100 per cent Virginia distributor, so he can testify to that a little more accurately.

Mr. Miller: He is going to testify as to his own [fol. 107] business, I suppose. I thought Mr. Derrick could tell me which are the Virginia distributors and which are the District of Columbia distributors.

Mr. Derrick: I think Mr. Saunders is in a better position to answer that.

Mr. Saunders: The last five listed, which are Alexandria Dairy, Birmingham Dairy, Mason F. Smith, Ray P. Mills, and Loudoun Distributing Company, are the five distributors located in Virginia who sell 100 per cent of their sales in Virginia and the note that you see on the bottom for the period covered indicates that they sold 33.68 per cent of the total sales in Virginia.

On their purchases, Alexandria Dairy purchased 100 per cent of their milk, of their sales, from Virginia; Birmingham Dairy purchased 100 per cent of their milk from Virginia; Mason F. Smith, who is a small producing distributor, purchased a very small amount this period from Chesnut Farms in bottles already packaged; Ray P. Mills, who is a producer-distributor, produced all of his own sales; and Loudoun Distributing Company, as is noted, purchased all of their milk in Washington from Chesnut Farms already packaged.

Does that answer your question?

Mr. Miller: The others I assume are the District of Columbia processors.

Mr. Saunders: Yes; Chesnut Farms, Thompson's Dairy, [fol. 108] Embassy Dairy, Lucerne Milk Company, Wakefield Dairy, and Highland Dairy are all located in the District of Columbia and licensed to do business in the Arlington-Alexandria area.

Mr. Miller: Mr. Chairman, the third largest District of Columbia distributor in these figures, which is located in the District of Columbia, is Lucerne Milk Company. I notice that they have a couple of gentlemen here. I was wondering if it would be all right if I asked them a few questions about their methods of doing business. Could you give me any help on that?

Commissioner Randolph: Suppose we take a few moments' recess at this time.

(At this time there was a short recess, after which the hearing was resumed.)

Commissioner Randolph: Before Mr. Hanson makes a statement we would like to say for the record—which is agreed to by Mr. Miller and others—that the set-up of Embassy Dairy and Wakefield Dairy, with the exception of the volume which is set out in the percentage figures in the exhibit of Mr. Saunders, is substantially similar to that of Chesnut Farms and Thompson's Dairy.

This statement is made because there are no representatives of these two concerns present to testify. There likewise is no representative of Highland Dairy, but it is agreed that the set-up and sales of Highland Dairy are [fol. 109] substantially similar to those set out in the opinion of the Agnew case, that is, Highland Farms Dairy against Agnew, 17 Federal Supplement 575; affirmed 300 U. S. 608; 57 Supreme Court 549; 81 Law Edition 835.

We have with us Mr. Burchell of Alexandria Dairy, and he will explain, if necessary, as to the set-up of the sales and flow of milk as to his concern. The sales of Birmingham Dairy, Mason F. Smith, Ray P. Mills, and Loudoun Distributing Company, the other four distributors selling only in Virginia, are substantially similar to that of Mr. Burchell's concern, the Alexandria Dairy, with the exceptions as set out in Mr. Saunders' statement a few minutes ago.

We will now hear from Mr. Hanson as to the flow of milk in his concern.

Mr. Hanson: Gentlemen, we have no prepared statement this morning and did not come prepared to make one. We will be glad to answer any questions put to us, and we will be glad to, if we cannot answer them, if you submit them to us in written form, get the answers for you.

We do have a plant over here on 2040 West Virginia Avenue in Washington, D.C. We receive all of our milk exclusively at that plant. We buy it all from the Virginia-Maryland Milk Producers Co-op.

Commissioner Randolph: Do you buy it from the co-op or from the members of the co-op?

[fol. 110] Mr. Hanson: We have approximately the same system as Chesnut Farms, Thompson's, and others, having our own producers and our field man to contact those producers, but the milk, as I understand, is sold to us by the co-op as the agent of the individual producer. We make no direct purchases from any of the producers.

Commissioner Randolph: Do they have any direct deliveries to you from their plants, or does it come through the co-op's receiving station or holding tank or anything like that?

Mr. Hanson: We have in some instances—I think Mr. Derrick will confirm me on this—farmers under contract with the co-op to deliver to our plant. We also have on the Maryland side—I do not believe in Virginia yet—several tanks set up.

Mr. Derrick: Yes.

Mr. Hanson: We have our own tanks on the truck route. What the contractual relationship is I do not know. That is something we would have to check and answer later.

Commissioner Randolph: After it gets to your plant in Washington—what is the address?

Mr. Hanson: 2040 West Virginia Avenue, N. E.

Commissioner Randolph: It is all processed and packaged there?

Mr. Hanson: That is correct.

[fol. 111] Commissioner Randolph: Then it is shipped out in trucks to the various Safeway Stores?

Mr. Hanson: That is correct.

Commissioner Randolph: And then sold from the Safeway Stores wherever they may be located?

Mr. Hanson: That is true.

Commissioner Randolph: You operate as Lucerne Milk Company and on your bookkeeping I presume you keep your milk transactions separate from everything else, but it is not a separate corporation from the Safeway Stores, is it?

Mr. Hanson: That is true, it is not a separate corporation. It is what we term an operating division. However, the accounting system, the bookkeeping, et cetera, is all kept on a separate basis and a billing is made to our retail operating division here in Washington for all the milk that the milk company distributes to the various Safeway Stores.

One other item of interest is that the drivers on these milk trucks receive exactly the same commission basis as the route salesmen do, the other wholesale drivers.

Mr. Whiteford: Other wholesale drivers of——

Mr. Hanson: Of other dairies in this area.

Commissioner Randolph: So for bookkeeping purposes you act as if you are really a separate entity?

Mr. Hanson: That is correct.

Commissioner Randolph: Although from a corporate [fol. 112] standpoint you are not?

Mr. Hanson: That is correct.

Commissioner Randolph: And you do bill yourself and all the various other features of cost accounting enter into it as if you were a separate organization?

Mr. Hanson: That is correct.

Commissioner Randolph: So there cannot really be any actual sale, I suppose, from the Lucerne Milk Company as an operating division of Safeway to Safeway when it delivers milk to the Safeway Stores, except for bookkeeping purposes?

Mr. Hanson: The Emergency Court of Appeals and the United States Court of Claims have both so held, that we cannot sell to ourselves.

Commissioner Randolph: You do not have any house to house deliveries?

Mr. Hanson: No. All the Lucerne milk is delivered directly to the Safeway Stores, which are retail grocery

stores and all the Lucerne milk is sold through the retail grocery stores. There is no delivery of any other type—to schools, homes, or anywhere else.

Commissioner Randolph: Your sole outlet is through your own stores?

Mr. Hanson: That is correct.

Mr. Miller: Just one other small question. These trucks that make the delivery are trucks belonging to Safeway [fol. 113] Stores or Lucerne, whatever you want to call them?

Mr. Hanson: No, they belong to Cortland Corporate Equipment Lessors, Inc., which is another wholly-owned corporation of Safeway Stores, which we lease them to.

Mr. Miller: They are leased to Lucerne?

Mr. Hanson: That is correct.

Commissioner Randolph: You own that which leases it to the division of the Safeway Stores?

Mr. Hanson: That is correct, and there is a rather interesting case, Safeway against Joiner, on that in Virginia.

Mr. Miller: Is that a tort liability case?

Mr. Hanson: It involves a matter of taxes. That held that they could not tax us an additional tax because they were operating under that set-up.

Commissioner Randolph: Does anybody think that should be added to in any way, or are there any further questions of Mr. Hanson? Do you have any further statement, Mr. Hanson?

Mr. Hanson: None. I will be glad to answer any questions you may have, or if you want some submitted in writing we will be glad to answer.

Commissioner Randolph: That takes care of the distributors who have plants in the District, and possibly Mr. Burchell of Alexandria Dairy might wish to make a few statements as to his set-up.

[fol. 114] Mr. Burchell: I will be glad to.

Mr. Chairman, members of the Commission, and gentlemen: My name is M. H. Burchell, and I operate and am President of the Alexandria Dairy Products Company. We are located at Pittman and Princess Streets in Alexandria, Virginia, and we buy all of our milk from producers

through the Maryland-Virginia Milk Producing Association, and it is delivered to our plant in Alexandria.

We sell all of our milk in Virginia. We sell no fluid milk other than in Virginia, Alexandria, Arlington, and vicinity. We do not deliver any milk in the District of Columbia. All of our purchases are in Virginia, and all of our sales are in Virginia.

Commissioner Randolph: Approximately one-third of the milk sold in the Arlington-Alexandria market is sold by your concern?

Mr. Burchell: I would think so.

Commissioner Randolph: That is what our figures show here.

Is there anything further?

Mr. Miller: I have one question I might ask.

What proportion of your milk is sold in Arlington, roughly, Mr. Burchell?

Mr. Burchell: I cannot give you the exact figure, sir. I would not know.

[fol. 115] Mr. Miller: Roughly.

Mr. Burchell: Probably a third of my sales.

Mr. Whiteford: Mr. Burchell, do you operate insofar as routes and route salesmen and solicitors are concerned, on the same basis as Chesnut Farms and Thompson's?

Mr. Burchell: Yes, sir. We do the same thing. We have salesmen that go out and try to solicit business the same as the other dairies, the same as our competitors.

Mr. Whiteford: And you sell wholesale to stores and restaurants and retail to the homes, house deliveries?

Mr. Burchell: Yes, sir.

Mr. Whiteford: And you make your collections substantially on the same basis as indicated by Chesnut Farms and Thompson's and others?

Mr. Burchell: On the same basis. Our workmen work on a salary and commission, the same as the other distributors.

Mr. Whiteford: Your labor contract that covers your plant operations, your route salesmen, and your drivers, is part of the same union contract with all the Washington distributors; is that correct?

Mr. Burchell: Yes, sir.

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Mr. Whiteford: Negotiated concurrently with all of them, with the union?

Mr. Burchell: That is right.

Mr. Whiteford: And so far as you know your whole [fol. 116] system of operation is identical with Chesnut Farms, Embassy, and others?

Mr. Burchell: Exactly.

Commissioner Randolph: With the exception that you do not cross the State line in any of your operations?

Mr. Burchell: That is correct.

Commissioner Randolph: With the statement as to the operations of the other dairies who do not have representatives here, I think that completes the picture as far as the distributors are concerned. We have Mr. Derrick here, who is the manager of the cooperative that supplies 85 per cent more or less of the milk in the metropolitan area and if anybody would wish to ask him any questions or if he would like to make any statements to verify the matter, we would be glad to have them.

Mr. Derrick: I have no statement, Mr. Chairman. I would be glad to answer any questions I can.

Mr. Miller: What was that percentage of milk sold in the metropolitan area that was handled through the cooperative?

Mr. Derrick: It has been reported around 80 per cent to 85 per cent.

Mr. Miller: What are the other sources of milk, other than handled through you?

Mr. Derrick: We have the other cooperative, the Capital Milk Producers Association. They have a number of producers, and then there are a large number of independent [fol. 117] producers that do not care to become members of any cooperative.

Mr. Miller: Does Capital Cooperative include any Virginia producers?

Mr. Derrick: I frankly do not know.

Commissioner Randolph: You can say, though, that in that 15 to 20 per cent that do not belong to your organization there are members in both Virginia and Maryland and possibly other States, but you do not know the percentage?

Mr. Derrick: That is right.

Commissioner Randolph: What percentage of your members are in Virginia and what percentage are elsewhere?

Mr. Derrick: Of our total supply?

Commissioner Randolph: Yes, sir.

Mr. Derrick: Approximately 50-50.

Commissioner Randolph: 50 per cent are in Virginia and 50 per cent—well, some of them are in West Virginia and Pennsylvania, I believe.

Mr. Derrick: Yes. That would still balance up pretty close.

Do you have that exact?

Mr. Saunders: I have it, Mr. Derrick and Mr. Chairman, for one month, the percentages for the month of March.

Mr. Derrick: Mr. Saunders got that from our books when I was not present, so I assume that is correct.

Mr. Saunders: For the month of March, 1951 the [fol. 118] Virginia members of the Maryland-Virginia Milk Producers Association produced 48.73 per cent of their total production. The Maryland producers represented 48.25 per cent. West Virginia producers represented 1.45 per cent. Pennsylvania producers represented 1.57 per cent of the production.

I have the number. If it is all right with Mr. Derrick I will give you the number of producers located in each State if you would like to have that.

Mr. Derrick: It is all right with me.

Mr. Miller: I think it would be helpful.

Mr. Saunders: For the same period: 823 located in Virginia, 829 in Maryland, 33 in West Virginia, and 35 in Pennsylvania, making a total of 1720 producers. For that period no other milk was handled by the Association other than the members' production.

Commissioner Randolph: Would you mind if the volume would go in there, sir, or not?

Mr. Derrick: If it will help you I have no objection.

Commissioner Randolph: We have it, of course. The thing is that it might help the court, who is going to consider this, too.

Mr. Derrick: We have no secrets.

Mr. Saunders: The volume by State in towns: Virginia, 21,279,000 pounds; Maryland, 20,791,082 pounds; West

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Virginia, 625,997 pounds; and Pennsylvania, 673,957 [fol. 119] pounds making a total for the period of 43,091,-315 pounds.

Commissioner Randolph: I noticed, Mr. Derrick, that at that particular time no other milk was handled by your Association than that from your regular producers. Perhaps you can amplify the statements already made as to emergency milk that is required by your customers.

Mr. Derrick: I think we would have to go back to approximately April, 1949. Prior to that time, between 1942 and probably April, 1949, we did purchase other milk, as has been indicated, but I think since that time we have been able to supply, since April, 1949, all our customers.

Commissioner Randolph: Since 1949?

Mr. Derrick: April, 1949. I think that is the correct date.

Commissioner Randolph: And since that time you have not bought any milk from other than your producers?

Mr. Derrick: Not for our metropolitan areas.

Commissioner Randolph: Is there anything else, Mr. Miller, that you would wish to bring out?

Mr. Miller: No, I think it is very well covered.

Commissioner Randolph: Does anybody else wish to bring anything out?

(Discussion off the record.)

Commissioner Randolph: After consulting with interested parties it was determined that possibly it would be of help [fol. 120] to the court in its determination for a statement to be made as to the administrative practice of the Milk Commission with reference to the control of milk in the metropolitan area or any parts thereof.

The regulations for the Arlington-Alexandria market have been filed as part of these proceedings. They of course speak for themselves, but in any possible clarification as to the administrative practice with reference to them we will state that any sales by a producer to a distributor whose plant is located in Virginia are considered to come within the scope of the regulations.

Those that are made to the distributors whose plants are in Washington do not. In other words, we consider the

sales by the producers to the Alexandria Dairy Products Company, whose plant is located in the Arlington-Alexandria area, to come within our regulations.

Those to Chesnut Farms, whose plant or receiving station is located outside of Virginia, are not considered by the Commission to come under the regulations.

The above statement has reference to sales of milk from producers to distributors. As far as sales from distributors to either stores or to homes, doorstep deliveries, we consider any such transactions as may occur within the Arlington-Alexandria market area as defined in the regulations to be under the control of the Milk Commission and to come [fol. 121] within the scope of these regulations as regards to the pricing as set forth in the regulations.

As far as sales from distributors to stores such as A & P and such, we consider the sales by them, by the distributors to such stores, as are located in the market area, to come within the regulations of that area; likewise the sales of these stores to the general public.

This in general comprises the scope of our regulations as they interpret them.

We have an appointment with the Budget Committee in Richmond at three o'clock, and it is now eleven-thirty. Mr. Turner and Mr. Owen have to be there, and we would like to have argument on this matter. The court instructed us to consider the evidence and after reviewing the evidence to make, if necessary, any change in our regulations, and I presume in our administration of the regulations, that is, if it is necessary, and of course arguments on that would help us a great deal in determining it.

We would like to have everything we can to arrive at a proper determination of this, and we would like to hear from counsel. How long would you like to talk, Mr. Miller?

Mr. Miller: I talked an hour to Judge Snead and I do not think I could do it or cover it in any less time.

Mr. Blum: Is that a repetition of what you previously said in your argument?

[fol. 122] Mr. Miller: It would be in part because, after all, it is the same issue. I would do it differently, I will say, because the contentions are a little bit different, and so forth.

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Commissioner Randolph: I prefer, of course, that the whole thing be dumped back in Judge Snead's lap, but he has held otherwise apparently and told us to reconsider the whole thing and I think to do it in a proper manner we should hear from counsel on that, so I suppose we should.

As I said, I would rather you gentlemen argue to Judge Snead, but maybe you will have to do both now.

Mr. Whiteford: I do not look on this as a matter of necessity for you to hear a great deal of argument on it. If Mr. Miller wants you to change your view I think it would be up to him to state merely what his position is. Frankly, I do not understand what his contention is, and I should think in five minutes he could state what his position is.

Mr. Miller: I cannot state my position in five minutes. I cannot state it in less than an hour.

Mr. Whiteford: It is up to the Commission.

Commissioner Randolph: Let us take a recess and then go to it.

(At this point there was a short recess, after which the hearing was resumed.)

Commissioner Randolph: It has been suggested and [fol. 123] concurred in by interested parties that instead of having oral arguments at this time, that after the evidence has been typed up written memoranda or briefs shall be filed as part of these proceedings by any interested parties. We will consider them and take any appropriate action that we see fit, and if see fit not do anything we will pass them on up to Judge Snead as part of the proceedings.

Unless unfor-seen circumstances come up we will expect Mr. Miller's brief by November 10, and of course if he can get it in before that it will be even better. Anybody who wishes to reply to that will have two weeks to do so after he submits it, and anybody who wishes to reply to it or consider replying to it should ask Mr. Miller for a copy of his brief to be sent to him at the same time as we receive it, and they should, of course, file copies with any other interested parties who may request them.

Will you send us two copies of yours?

Mr. Miller: Yes, sir.

Mr. Blum: How many copies of the reply brief do you want?

Commissioner Randolph: We want two, and then of course whoever else is interested.

Mr. Miller: There is one problem that will be raised. In reply they may raise or cite some cases that I might consider entirely inappropriate and might consider it as being [fol. 124] distinguishable. Would it be proper if I could, subsequent to their briefs, make such distinctions in some further communication?

Commissioner Randolph: I think it is entirely proper that you should have a week to reply to them.

We are very informal in our procedure, and of course if anything comes up and that is not agreeable we will be delighted to do what we can to make it easier to change the procedure, but unless we can do that is the outline, and by that way we will get something done, we hope, by the first of December.

Mr. Whiteford: Will that hold up the matters that were discussed yesterday, that is, your decision on them?

Commissioner Randolph: I do not think that we should do that.

If we find that we should make a decision on the merits, as it were, in the proceedings of yesterday, we shall do so with the right of course to be guided later by the briefs that are submitted.

Mr. Miller: You have one problem, and that is that the statute governing the appeal requires the appeal to be made within a certain number of days after the order and I do not know whether anybody has any discretion or power to waive that statutory requirement.

Commissioner Randolph: We are not binding ourselves [fol. 125] to it, Mr. Miller, but it has been the policy of the Commission, and I hope will continue to be so, to always give an opportunity for anybody to correct any mistake we have and not to cut them off from appeal, and I am sure that we would make every attempt, and it is my disposition to say that we would, to either reconsider it or do something so that you or anybody else who would be affected would

not be cut off from appeal. If they wanted to appeal that they could do it, of course.

Mr. Whiteford: The only reason I raised it was because it does not seem to me that the other matters ought to wait a decision as late as the first of December merely because we cannot get these briefs in. If that is going to hold that up, on account of these briefs, I then say, put them in by Monday or Tuesday.

Commissioner Randolph: We will now adjourn.

(Whereupon, at 11:45 a.m., Wednesday, October 10th, 1951, the hearing was closed.)

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[fol. 126]

EXHIBIT No. 4

Before the State Milk Commission

Maryland-Virginia Milk Producers' Association

| State | Members' Production | Per Cent | Number of Producers |
|---|---|---|---|
| Virginia | 21,000,279 | 48.73% | 823 |
| Maryland | 20,791,082 | 48.25 | 829 |
| West Virginia | 625,997 | 1.45 | 33 |
| Pennsylvania | 673,957 | 1.57 | 35 |
| Total | 43,091,315 | | 1,720 |

No other milk handled during this period.

State Milk Commission

FJS Jr.

[fol. 127]

March, 1951

EXHIBIT No. 5

Before the State Milk Commission

Sales and Receipts of Distributors Selling in the Arlington-Alexandria Market

| Distributor | % Each Distributor Sold in Virginia to His Total Sales | % Each Distributor Sold in Virginia to the Total Virginia Sales | % Each Dis. Purchased from Virginia Producers to His Total Purchases | % Each Dis. Purchased from Virginia to Total Virginia Purchases | % of Virginia Sales to Virginia Purchases |
|---|---|---|---|---|---|
| Chesnut Farms | 13.77% | 33.03% | 46.09% | 53.45% | 28.92% |
| Thompson's Dairy | 23.00 | 18.15 | 55.50 | 20.58 | 41.28 |
| Embassy Dairy | 3.74 | 2.05 | 8.23 | 2.24 | 42.82 |
| Lucerne Milk Co. | 17.96 | 10.53 | 15.30 | 4.22 | 116.90 |
| Wakefield Dairy | 5.04 | 1.50 | 24.32 | 3.38 | 20.74 |
| Highland Dairy | 17.53 | 1.06 | 14.45 | .41 | 121.03 |
| Alexandria Dairy | 100.00 | 33.01 | 100.00 | 15.45 | 100.00 |
| Birmingham Dairy | 100.00 | .34 | 100.00 | .16 | 100.00 |
| Mason F. Smith | 100.00 | .19 | 96.69 | .08 | 103.42 |
| Ray P. Mills | 100.00 | .06 | 100.00 | .03 | 100.00 |
| *Loudoun Dis. Co. | 100.00 | .68 | -0- | -0- | -0- |

* Purchased all milk sold from Chesnut Farms, Washington, D. C., already packaged.

Five Distributors located in the state selling 100% of their sales in the state sold 33.68% of the total sales represented for this period.

Three distributors located in the state, who purchased all of their receipts in the State, purchased 15.64% of the total purchases in Virginia.

State Milk Commission

FJS Jr.

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[fol. 128]

EXHIBIT No. 6

BEFORE THE STATE MILK COMMISSION

Excerpt from the Minutes of the Commission, Held on December 28, 1951

The Commission, with Chairman Mark Turner not participating, having considered the evidence taken on October 9th and 10th concerning the distribution and flow of milk in the Arlington-Alexandria Market and the arguments of counsel thereon, and the Commission being of the opinion that no further order or action is necessary in the Arlington-Alexandria Market as a result of such evidence, it is ordered that the said evidence and other papers incident thereto be certified by the Secretary of the Commission and transmitted to the Circuit Court of the City of Richmond to be considered as part of the record in the case of *The*

*County Board of Arlington County, Virginia, et als.*, versus *State Milk Commission.*

A True Copy:

John W. Owen, Secretary, State Milk Commission.

December 31, 1951.

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[fol. 129] EXHIBIT No. 7

BEFORE THE STATE MILK COMMISSION

SECRETARY'S CERTIFICATE

I, John W. Owen, Secretary of the State Milk Commission, do certify that the foregoing papers, as set forth in the Table of Contents, are either the originals or copies pertaining to the Arlington-Alexandria Public Hearings, held in Alexandria, Virginia, and Washington, D. C., on October 9 and October 10.

John W. Owen, Secretary, State Milk Commission.

December 31, 1951.

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[fol. 130] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

Re: The County Board of Arlington County, Virginia, a body corporate; et als., v. State Milk Commission.

MEMORANDUM OPINION—filed June 20, 1952

Gentlemen:

By a decree entered October 9, 1951, the court held that the notice which preceded the public milk hearing in the Arlington-Alexandria Market Area on January 11, 1951, was sufficient and lawful; that the State Milk Commission had authority to raise, lower or refuse to change the price of milk in said market area and that Arlington-Alexandria Market Order No. 4 increasing milk prices was not unreasonable or capricious. Since the record was devoid of

factual basis for a consideration of the question of interstate commerce as related to said market area, the court by said decree remanded the record to the State Milk Commission for the taking of such additional testimony as may be offered by the petitioners, the defendant or any other interested parties relating to the moving of milk in interstate commerce in said market area. The Commission was directed to certify and file with this court such additional testimony taken, and if said order No. 4 be amended by the Commission to file same with this court. The Commission filed the additional testimony but did not amend said order No. 4.

[fol. 131] Due consideration has been given the supplemental record and the memoranda submitted by counsel. Under the authorities cited therein as applied to the facts in this case, the court is of opinion that the minimum price regulation in question is not a burden on interstate commerce; that the State Milk Commission can legally fix the minimum sale price of fluid milk sold and delivered to consumers in the Arlington-Alexandria Market Area from trucks of the District of Columbia distributors and that Arlington-Alexandria Market Order No. 4 should be sustained.

Upon presentation of a proper decree, same will be entered.

Yours very truly, Harold F. Snead, Judge.

s/s.

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[fol. 132] In the Circuit Court of the City of Richmond

[Title omitted]

Decree Dismissing Appeal—July 22, 1952

This cause came again on this day to be heard upon the petition for appeal, the answer thereto, the record certified to the Court by the State Milk Commission, the supplemental record of additional testimony certified by the State Milk Commission, taken pursuant to decree of October 9, 1951, heretofore entered in this cause, the memoranda submitted, and was argued by counsel.

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Upon consideration whereof, it appearing to the Court that the Arlington-Alexandria Order No. 4, establishing a minimum sale price for milk in the Virginia Arlington-Alexandria Market Area, does not constitute an unconstitutional burden on interstate commerce and that the State Milk Commission can lawfully establish the minimum sale price of fluid milk sold and delivered to consumers in the Arlington-Alexandria Market area, irrespective of the point of origin of the milk so delivered;

Now, therefore, it is adjudged, ordered and decreed that the State Milk Commission Arlington-Alexandria Market Order No. 4 be, and the same is hereby, sustained; that the [fol. 133] prayers of the petitioners herein be, and the same are hereby, denied, and that the petition for appeal herein be, and the same is hereby, dismissed.

Enter:

(S.) Harold F. Snead.

I ask for this:

(S.) Thomas M. Miller, Assistant Attorney General, Attorney for Defendant.

Seen:

(S.) Malcolm D. Miller, Attorney for Petitioners.

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[fol. 134] In the Circuit Court of the City of Richmond

[Title omitted]

Notice to Clerk to Prepare Record for Appeal and Assignment of Errors—filed September 18, 1952

To the Clerk of the said Court:

You are hereby notified that a petition for writ of error in the above-styled cause will be applied for, and you are accordingly notified to proceed to get the record up, as required by law. Counsel for petitioners stipulates the record to be as follows:

1. Plaintiffs' petition for appeal, including attachments.
2. Defendant's answer.
3. Record received by the Court from the State Milk Commission.

4. Letter opinion of the Court, dated September 26, 1951.

5. Order of October 9, 1951, remanding the matter to the State Milk Commission.

6. Record received by the Court from the State Milk Commission on January 2, 1952.

7. Letter opinion of the Court dated June 20, 1952.

8. Final decree and order entered July 22, 1952.

9. This notice.

Assignments of Error

1. The Circuit Court of the City of Richmond erred in holding that the State Milk Commission can legally fix the minimum sale price of fluid milk sold and delivered to consumers in the Arlington-Alexandria Market Area [fol. 135] from trucks of the District of Columbia distributors and that the Arlington-Alexandria Market Order No. 4 should be sustained. Such commerce is interstate in a field beyond the control and jurisdiction of the Commonwealth of Virginia and the State Milk Commission by reason of (1) the commerce clause of the United States Constitution, and (2) occupancy of the field of regulation by Act of Congress in the Agricultural Marketing Agreement Act, 7 U.S.C., sec. 601 et seq., particularly sec. 608c.

2. The State Milk Commission has no jurisdiction of such interstate commerce by reason of section 3-381 of the 1950 Code of Virginia; but the holding that the Commission has such jurisdiction, if upheld, would render the regulation of the Milk and Cream Act of Virginia in violation of the United States Constitution.

3. The Court erred in holding that the question at issue in the proceeding was whether the minimum price regulation is a burden on interstate commerce; and such regulation is a burden on interstate commerce.

Given under my hand this 17th day of September, 1952.

(S.) Malcolm D. Miller, Attorney for Petitioners, Munsey Building, Washington 4, D.C.

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Certificate of Service (omitted in printing)

(File endorsement omitted.)

[fols. 136-139] IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

[Title omitted]

DESIGNATION OF RECORD TO BE PRINTED—filed September 30, 1952

To the Clerk of the said Court:

Please transfer the record in the above-styled cause to the Clerk of the Supreme Court of Appeals of Virginia. The parts to be printed are designated as follows:

1. Plaintiff's petition for appeal, but not including attachments.
2. Defendant's answer.
3. Letter opinion of the Court, dated September 26, 1951.
4. Order of October 9, 1951, remanding the matter to the State Milk Commission.
5. Transcript of proceedings on October 10, 1951, before the State Milk Commission, including exhibit No. 1 mentioned on page 15 of transcript.
6. Letter opinion of the Court dated June 20, 1952.
7. Final decree and order entered July 22, 1952.
8. Notice to clerk to prepare record for appeal and assignment of errors, filed September 18, 1952.

(S.) Malcolm D. Miller, Attorney for Plaintiffs.

September 29, 1952.

I hereby certify that a copy of this document was mailed on September 29, 1952, to the Attorney General of the Commonwealth of Virginia, Counsel for Defendant.

(S.) Malcolm D. Miller, Attorney, Munsey Building, Washington 4, D.C.

(File endorsement omitted.)

[fol. 140] IN THE SUPREME COURT OF APPEALS OF VIRGINIA

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate, ET ALS., Complainant,

v.

STATE MILK COMMISSION, Respondents

PETITION FOR APPEAL FOR WRIT OF ERROR—November 18, 1952

From the Circuit Court of Arlington, Virginia:

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

Your petitioner, the County Board of Arlington County, Virginia, respectfully represents that it is aggrieved by a final decree made and entered on the 22nd day of July, 1952, by the Circuit Court of the City of Richmond, Virginia, in the above-styled cause (Chancery B-643) wherein the County Board of Arlington County is complainant, and the State Milk Commission is the defendant.

Summary of Facts and Proceedings in the Trial Court

The proceedings in the trial court involved the Milk and Cream Act as set forth in sections 3-346 to 3-383 inclusive, of the Code of Virginia, 1950.

The statement of the material proceedings in the lower court and the statement of the facts will be presented in this petition as one statement because facts are not in dispute.

On January 11, 1951, the State Milk Commission held a public hearing in Alexandria, Virginia, relative to the marketing of milk in the Arlington-Alexandria Market Area. Subsequent to the hearing by an order, rule or regulation designated as *Arlington-Alexandria Market Order No. 4* made, adopted and posted by the State Milk Commission of the Commonwealth of Virginia on January 21, 1951, the retail and wholesale prices of milk and cream in Arlington County were increased. Pursuant to Section 3-371 of the Code, the County Board of Arling-[fol. 141] ton appealed the action of the Commission to the Circuit Court of the City of Richmond. Two conten-

tions were made in that forum: (1) The Commission's order, increasing milk and cream prices, was unreasonable and capricious; because it was issued after notice and hearing which did not give actual notice or bring in issue the matter of increasing prices, and the issue presented and considered was limited to the question whether a seasonal reduction was to occur in the prices paid by the distributors to the producers. (2) The Commission is without authority or jurisdiction to regulate the prices of milk and cream moving in interstate commerce which has been processed and bottled in the distributors' plants in the District of Columbia and delivered directly to the residence doors of consumer-purchasers at retail in Arlington County, Virginia.

On September 26, 1951, the trial court ruled against the Complainant as to the first contention. As to the second contention the court was of the opinion that the record was not so constituted that the interstate commerce question could be considered. Exercising the authority granted in Section 3-371(3) of the Code of Virginia, 1950, the court remanded the record to the Commission for the taking of such additional testimony as may be offered by the complainant, the defendant, or other interested parties in the Arlington-Alexandria Market Area. The court directed the Commission to certify and file with the court such additional testimony taken, and any amendments or revisions made by the Commission to Order No. 4.

Pursuant to the court's direction, the Commission on October 10, 1951, held a hearing to determine the quantity of milk moving through the channels of interstate commerce to the Arlington-Alexandria Market. Participating in the hearing were representatives of the producers and distributors in the market area, the County Board of Arlington County, and staff employees of the Milk Commission. The most pertinent data to this appeal presented at the hearing was given in the form of an exhibit by Mr. F. J. Saunders, Jr. Auditor, Virginia Milk Commission. [fol. 142] This exhibit showed that the two largest distributors in the District of Columbia selling in the market area, Chestnut Farms and Thompson's Dairy, made 33.03 and 18.15 per cent, respectively, of the total

sales. Testimony by their representatives indicated that Chestnut Farms' doorstep deliveries amounted to approximately 50 per cent of their total, and for Thompson's Dairy the figure would be between 60 and 65 per cent. The Saunders' exhibit further indicated that District of Columbia distributors made approximately 66 per cent of the total sales, doorstep and store deliveries, of the total sales in the Arlington-Alexandria Market. Thus, the factual data for the determination of the interstate commerce issue was squarely placed before the Commission and the trial court.

The Commission filed the additional testimony and evidence with the court, but did not amend Order No. 4. On June 20, 1952, the court ruled that the minimum price regulation in question is not a burden on interstate commerce; and that the State Milk Commission can legally fix the minimum sale price of fluid milk sold and delivered to consumers in the Arlington-Alexandria Market Area from trucks of the District of Columbia distributors and that Arlington-Alexandria Market Order No. 4 should be sustained. A final decree and order in the matter was entered July 22, 1952.

[fol. 143] Question Involved

1. The authority of the State Milk Commission to regulate the sale price of fluid milk sold and delivered to consumers in the Arlington-Alexandria Market Area from trucks of District of Columbia distributors.

2. Whether or not the authority of the State Milk Commission to regulate the sale price of fluid milk sold and delivered to consumers in the Arlington-Alexandria Market Area is to be determined by the degree of "burden" placed upon interstate commerce.

Assignment of Errors

1. The Circuit Court of the City of Richmond erred in holding that the State Milk Commission can legally fix the minimum sale price of fluid milk sold and delivered to consumers in the Arlington-Alexandria Market Area from trucks of the District of Columbia distributors and that the

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Arlington-Alexandria Market Order No. 4 should be sustained. Such commerce is interstate in a field beyond the control and jurisdiction of the Commonwealth of Virginia and the State Milk Commission by reason of (1) the commerce clause of the United States Constitution, and (2) occupancy of the field of regulation by Act of Congress in the Agriculture Marketing Agreement Act, 7 U. S. C., sec. 601, particularly sec. 608c.

2. The State Milk Commission has no jurisdiction of such interstate commerce by reason of section 3-381 of the Code of Virginia, 1950; but the holding that the Commission has such jurisdiction, if upheld, would render the regulation of the Milk and Cream Act of Virginia in violation of the United States Constitution.

3. The Court erred in holding that the question at issue in the proceeding was whether the minimum price regulation is [fol. 144] a burden on interstate commerce; and such regulation is a burden on interstate commerce.

## Argument

### I

*Regulation of Milk Delivered Directly in Interstate Commerce Is in a Field of Interstate Commerce which a State Cannot Regulate by Reason of the Commerce Clause of the United States Constitution.*

A. The Commerce Clause of the United States Constitution restrains the States from imposing regulations or burdens upon direct movements in interstate commerce.

There is a field of interstate commerce in which the State has *no* jurisdiction, and this area must be distinguished from that in which interstate commerce may be regulated as an incident to regulation of intrastate commerce. The following rule to this effect is quoted from the very recent case of *Freeman* v. *Hewit*, 329 U.S. 249, 252; 91 L.Ed. 265; 67 S. Ct. 274, which explains the difference:

> "Our starting point is clear. In two recent cases we applied the principle that the Commerce Clause was not merely an authorization to Congress to enact laws for the protection and encouragement of commerce among

the States, but by its own force created an area of trade free from interference by the States. *In short, the* Commerce Clause, even without implementing legislation by Congress is a limitation upon the power of the States. *Southern Pacific Co.* v. *Arizona,* 325 U.S. 761; *Morgan* v. *Virginia,* 328 U.S. 373. In so deciding we reaffirmed, upon fullest consideration, the course of adjudication unbroken through the Nation's history. This limitation on State power, as the Morgan case so well illustrates, does not merely forbid a State to single out interstate commerce for hostile action. A State is also precluded from taking any action which may fairly be deemed to have the effect of impeding the free flow of trade between the States. It is immaterial that local commerce is subjected to a similar encumbrance. It may commend itself to a State to encourage a pastoral instead of an industrial society. That is its concern and its privilege. But to compare a State's treatment of its local trade with the exertion of its authority against commerce in the national domain is to compare incomparables."

See also: *Missouri* v. *Kansas Gas Co.,* 265 U.S. 298, 307-8; [fol. 145] 44 S. Ct. 544; 68 L.Ed. 1027; *Lemke* v. *Farmers Grain Co.,* 258 U.S. 50, 58-9; 66 L.Ed. 458; 42 S. Ct. 244; *Shafer* v. *Farmers Grain Co.,* 268 U.S. 189, 45 S. Ct. 481, 69 L.Ed. 909; *McLeod* v. *Dilworth,* 322 U.S. 327, 349, 64 S. Ct. 1023, 1030, 88 L.Ed. 1304, 1319; *Spector Motor Service* v. *O'Connor,* 340 U.S. 602, 95 L.Ed. 435, 71 S. Ct. 508.

Some of the cases state that the field in which the States cannot act is that in which the interstate commerce is "national" in character. But the term "national character" has been defined to include transportation, purchase, sale, and exchange of commodities moving directly in interstate commerce. The following cases support that rule:

> "Interstate commerce, consisting in the transportation, purchase, sale and exchange of commodities is national in its character, and must be governed by a uniform system." and "so long as Congress does not pass any law to regulate it, or allowing the States to do so, it thereby indicates its will that such commerce shall be

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free and untrammelled." *Leisy* v. *Hardin,* 135 U.S. 100, 190-110; 10 S. Ct. 681; 34 L.Ed. 128.

"'Some of them are national in their character, and admit and require uniformity of regulation, affecting alike all the States; others are local, or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the states which consists of the transportation, purchase, sale, and exchange of commodities. Here there can of necessity be only one system or plan of regulations, and that Congress alone can prescribe. Its non-action in such cases with respect to any particular commodity or mode of transportation is a declaration of its purpose that the commerce in that commodity, or by that means of transportation shall be free." *Bowman* v. *Chicago,* 125 U.S. 482, 485; 8 S. Ct. 681, 1062; 31 L.Ed. 700.

The distinguishable situations in which a State may regulate interstate commerce as an incident to State regulation should be concerned primarily with the commodity *before* or *after* it has been transported; and the States cannot regulate the incidents of the importation. The distinction is made in the following statements of the U.S. Supreme Court:

"But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed *after* coming within the State, but directly upon the business as it comes into the State from without or goes out from within." *Hall* v. *DeCuir,* 95 U.S. 488, 488-9; 24 L.Ed. 547. (Emphasis added.)

[fol. 146] "It is enough to say, that the power to regulate or forbid the sale of a commodity *after* it has

been brought into the State, does not carry with it the right and power to prevent its introduction by transportation from another State." (Emphasis added.) *Bowman* v. *Chicago,* 125 U.S. 465, 485; 8 S. Ct. 689, 1062; 31 L.Ed. 700.

In argument, before the Circuit Court of the City of Richmond, the State Milk Commission's counsel cited three cases, which should be distinguished on the facts as not involving the direct movement across state lines involved in this proceeding. There is *Milk Board* v. *Eisenberg,* 306 U.S. 346; 59 S. Ct. 528; 83 L.Ed. 752, which upheld State regulation of prices paid Pennsylvania producers by Eisenberg company, a Pennsylvania corporation, at its Pennsylvania receiving plant, from which the milk was later exported to New York. In that case the U. S. Supreme Court said:

"There is, therefore, a comparatively large field remotely affecting and wholly unrelated to interstate commerce within which the statute operates. These considerations we think justify the conclusion that the effect of the law on interstate commerce is incidental and not forbidden by the Constitution, in the absence of regulation by Congress." (p. 353.)

There was also the case of *Parker* v. *Brown,* 317 U.S. 341; 63 S.Ct. 307; 87 L.Ed. 315; involving California regulation of prices of raisins paid to California producers by California processors. In that case the Court said (317 U. S. 361):

"Applying that test, the regulation here controls the disposition, including the sale and purchase, of raisins *before* they are processed and packed preparatory to interstate sale and shipment. The regulation is thus applied to transactions wholly intrastate *before* the raisins are ready for shipment in interstate commerce." (Emphasis added.)

There was also the recent case of *Cities Service Co.* v. *Peerless Co.* 340 U. S. 179; 95 L.Ed. 156; 71 S.Ct. 215, in

which Oklahoma regulated the minimum wellhead price on all gas taken from a natural gas field within Oklahoma although part of the gas later moved in interstate commerce. The court pointed out, however, the local concern of the State in conservation of its natural gas, and the fact that this gas was in intrastate commerce as well as interstate commerce. These cases, as well as others which might be cited all deal, however, with local incidents not directly concerned with the movement of the commodity across State lines.

[fol. 147] The State Milk Commission apparently is of the view that the sale of milk for delivery to Virginia consumers is a Virginia transaction, and hence the price is subject to the Commission's jurisdiction.

It is the position of the Arlington County Board that the sale for delivery to Arlington consumers is an integral and inseparable part of the transportation of the milk by trucks of the distributors from the District of Columbia to doorsteps of consumers in Arlington, and that the various acts or incidents attending the sale in Arlington are immaterial to the continued status of the transaction in interstate commerce. In other words, the importation is subjected to the requirement that the sales price must be that set by the Virginia Commission, and hence the State imposes a burden or obstruction to the interstate transaction, in violation of the U.S. Constitution.

The view of the State Milk Commission depends upon an erroneous conception of the status of the sale which is part of the direct movement in interstate commerce from the District of Columbia to Virginia. In this connection, the Court's attention is directed to the fundamental principle set forth in *Brown* v. *Maryland*, 12 Wheaton 419, in which the U.S. Supreme Court said:

> "What then is the just extent of the power to regulate commerce with foreign nations, and among the several states? The power is coextensive with the subject on which it acts, and cannot be stopped at the external boundary of a state, but must enter its interior, and if this power reaches the interior of a state, and may be there exercised, it must be capable of authorizing the sale of those articles which it intro-

duces. Commerce is intercourse and one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic should cease at the point where its continuance is indispensable to its value. To what purpose should the power to allow importation be given if unaccompanied with the power to authorize a sale of the thing imported? Sale is the object of importation and it is as essential an ingredient, as indispensable to the existence of the entire thing as the importation itself. It must be considered as a component part of the power to regulate commerce, and Congress has a right, not only to authorize importation, but to authorize the importer to sell. If the power to authorize a sale exists in Congress, the conclusion that the right to sell is connected with the law permitting importation, as an inseparable incident, is inevitable."

The same rule was followed in *Dahnke-Walker Co.* v. *Bondurant*, 257 U.S. 282, 42 S. Ct. 106.66 L.Ed. 239. That case raised an issue of validity of a Kentucky statute [fol. 148] which made unenforceable contracts by corporations not authorized to do business in the state. The corporation in that case sued for breach of contract made in Kentucky to deliver wheat grown in Kentucky on board rail cars at a Kentucky origin, which the corporation intended to move to its mill in Tennessee. The state court held the contract to have been in intrastate commerce and unenforceable, but the U.S. Supreme Court held to the contrary, saying that it was in interstate commerce (p. 292), and further stated (290-1):

"Where goods in one State are transported into another for purposes of sale the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination and while they are in the original packages. *Brown* v. *Maryland*, 12 Wheat. 419, 446-447; *American Steel & Wire Co.* v. *Speed*, 192 U.S. 500, 519. On the same principle, where goods are purchased in one State for transportation to another the commerce includes the

purchase quite as much as it does the transportation. *American Express Co.* v. *Iowa*, 196 U.S. 133, 143. This has been recognized in many decisions construing the commerce clause. Thus it was said in *Welton* v. *Missouri*, 91 U.S. 275, 280: 'Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all forms, including the transportation, purchase, sale, and exchange of commodities.' In *Kidd* v. *Pearson*, 128 U.S. 1, 20, it was tersely said: 'Buying and selling and the transportation incidental thereto constitute commerce.' In *United States* v. *E. C. Knight Co.*, 156 U.S. 1, 13, 'contracts to buy, sell, or exchange goods to be transported among the several states' were declared 'part of interstate trade or commerce.' And in *Addyston Pipe & Steel Co.* v. *United States*, 175 U.S. 211, 241, the court referred to the prior decisions as establishing that 'interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities.' In no case has the court made and distinction between buying and selling or between buying for transportation to another State and transporting for sale in another State. Quite to the contrary, the import of the decisions has been that if the transportation was incidental to buying or selling it was not material whether it came first or last.

"A corporation of one State may go into another, without obtaining the leave or license of the latter, for all the legitimate purposes of such commerce; and any statute of the latter State which obstructs or lays a burden on the exercise of this privilege is void under the commerce clause." . . .

In the instant case we have, of course, sale of milk in the original package or bottle. It has long been a rule that a State cannot regulate the importation of a commodity and [fol. 149] its subsequent sale by the importer in the original package, whether the subsequent sale is retail

or wholesale. See *Schollenberger* vs. *Pa.*, 171 U.S. 1, 18 S.Ct. 757; 43 L.Ed. 49. In that case the U. S. Supreme Court held invalid a Pennsylvania statute which prohibited importation and sale of oleomargarine in that State.

The rule has also been applied to milk. In *Baldwin* v. *Seelig*, 294 U. S. 511, 55 S. Ct. 497, 101 A.L.R. 55, 79 L. Ed. 1032, the U. S. Supreme Court went beyond the original package doctrine where the milk was bottled for sale after it had arrived in New York in cans. The Court held that the sales price in New York still was not subject to State regulation, and said (527-8):

> "The importer must be free from imposts framed for the very purpose of suppressing competition from without and leading inescapably to the suppression so intended.
>
> "The statute here in controversy will not survive that test. A dealer in milk buys it in Vermont at prices there prevailing. He brings it to New York, and is told he may not sell it if he removes it from the can and pours it into bottles. He may not do this for the reason that milk in Vermont is cheaper than milk in New York at the regimented prices, and New York is moved by the desire to protect her inhabitants from the cut prices and other consequences of Vermont competition. To overcome that competition a common incident of ownership—the privilege of sale in convenient receptacles—is denied to one who has bought in interstate commerce. He may not sell on any terms to any one, whether the orders were given in advance or came to him thereafter. . . ."
>
> ". . . It is one thing for a state to exact adherence by an importer to fitting standards of sanitation before the products of the farm or factory may be sold in its markets. It is a very different thing to establish a wage scale or a scale of prices for use in other states, and to bar the sale of the products, whether in the original package or in others, unless the scale has been observed."

In the very recent case of *Hood* v. *DuMond*, 336 U. S. 525; 69 S.Ct. 657; 93 L.Ed. 865; the U.S. Supreme Court cited the above-quoted decision with approval, and said:

> "*Baldwin* v. *Seelig*, 294 U.S. 511, is an explicit, impressive, recent and unanimous condemnation by the Court of economic restraints on interstate commerce for local economic advantage, but it does not stand alone. This Court consistently has rebuffed attempts of states to advance their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state, while generally supporting their right to impose even burdensome regulations in the interests of local health and safety."

[fol. 150] Even in this latter field of health regulations, however, the Court has forbidden the States to limit the sources of supply of milk in interstate commerce; see *Dean Milk Co.* v. *Madison, Wis.*, 340 U.S. 349; 71 S.Ct. 295; 95 L.Ed. 228.

The scope of *Hood* v. *DuMond*, supra, is indicated by the dissenting opinion of Justice Black, who said (336 U.S. 555):

> "Numerous cases, for examples *Parker* v. *Brown*, 317 U.S. 341, and *Milk Board* v. *Eisenberg*, 306 U.S. 346, which made judicious appraisels under the Cooley rule are gently laid to rest. Their interment is tactfully accomplished, without ceremony, eulogy, or report of their demise. The ground beneath them has been deftly excavated by a soothing process which limits them to their facts, their precise facts, their 'plain requirements' . . . State regulatory agencies too will be relieved of a large share of their traditional duties when they discover that bad local business practices are now judicially immunized from state regulation."

B. Federal regulation of milk prices has resulted in exclusion of State regulation in the Arlington-Alexandria Market Area.

Interstate commerce in milk was regulated from November 1945 to March 1947 by the Secretary of Agri-

culture under the Agricultural Marketing Agreement Act (7 U.S.C. sec. 601 et seq., particularly sec. 608c), but that regulation was terminated by the producers, as the Federal statute permits them to do. The Federal statute was enacted not only "to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy . . ." etc., and to that end the prices paid producers are subject to minimum price regulation. However, the regulation must also be such as to "protect the interests of the consumer by . . . " etc. as provided in section 602. The term "interstate commerce" is given broad definition in section 610 (j). Section 610 (i) provides that the Secretary of Agriculture may, upon request, exercise his powers cooperatively with State officials.

The Federal and Virginia statutes are different in that [fol. 151] the State statute authorizes direct regulation of retail prices, and maximum as well as minimum prices to consumers, while the Federal regulation provides for protection of the consumer in an indirect manner. But the fact that regulation is different, or complementary, does not result in the conclusion that some portion of the field has been left open to the States; see *Hines* v. *Davidowitz*, 312 U.S. 52, 66-7; 61 S.Ct. 399; 85 L.Ed. 581, in which the court said:

> "And where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or *complement the federal law, or enforce additional or auxiliary regulations.*" (Emphasis added.)

In Virginia, of course, the regulation of retail milk prices in interstate commerce indirectly regulates the wholesale prices paid to producers, which the Federal legislation would directly regulate. These differences go to the methods of regulation, however, rather than to the purpose

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of the regulation or to the completeness of the schemes. But the differences of method do not authorize State action. In *First Nat. Ben. Soc.* v. *Garrison*, 58 F. Supp. 972, 155 F. 2d 522, the District Court said:

> "When Congress exercises its exclusive powers over interstate commerce, the states cannot legislate on the subject, and the situation is covered as much by what is not done by Congress or the Interstate Commerce Commission, as by the regulations it has made, and the State has no power to fill what it may regard as a hiatus left by Congress and the Interstate Commerce Commission."

The fact that the Federal regulations have not been made effective does not result in conferring jurisdiction upon the State. Occupancy of the field by the Federal government is made by legislation, as shown by the following:

> "The federal and state statutes are directed to the same subject—the equipment of locomotives. They operate upon the object. It is suggested that the power delegated to the Commission has been exerted only in respect to minor changes or additions. But this, if true, is not of legal significance. It is also urged that, even if the Commission has power to prescribe an automatic firebox door and a cab curtain, it has not done so; and that it has made no other requirement inconsistent with the state legislation. This also, if true, is without legal significance. The fact that the Commission has not seen fit to exercise its authority to the full extent conferred, has no bearing [fol. 152] upon the construction of the Act delegating the power." See *Napier* v. *Atlantic Coast Line*, 272 U.S. 605, 612-3; 47 S. Ct. 207; 71 L.Ed. 432.
>
> "It is suggested that the States may act in the absence of any action by the Secretary of Agriculture; that it is left to him to allow the States to quarantine, and that if he does not act there is no invalidity in the state action. Such construction can not be given to the federal statute. The obligation to act without respect to the States is put directly upon the Secretary

of Agriculture whenever quarantine, in his judgment, is necessary. When he does not act, it must be presumed that it is not necessary. With the federal law in force, state action is illegal and unwarranted." *Oreg.-Washington* v. *Washington*, 270 U.S. 87, 101; 46 S.Ct. 279; 70 L.Ed. 482. (270 U.S. at p. 102-3).

The foregoing cases related to Federal occupancy of a field in which the States could otherwise act within State police powers, but had been excluded by the Federal legislation. As previously pointed out, however, there is a field of *exclusive* Federal regulation in which the State never can act. In this latter field, the following rule is applicable, as stated in the following cases:

"Nothing which is a *direct* burden upon interstate commerce can be imposed by the State without assent of Congress, and . . . the silence of Congress in respect to any matter of interstate commerce is equivalent to a declaration on its part that it should be absolutely free." *Brennan* v. *Titusville*, 153 U.S. 299; 14 S.Ct. 829; 38 L.Ed. 719.

"Its non-action in such cases with respect to any particular commodity or mode of transportation is a declaration of its purpose that the commerce in that commodity, or by that means of transportation shall be free." *Bowman* v. *Chicago*, supra (125 U.S. p. 485).

"The contention that, in the public interest, the business is one requiring regulation, need not be challenged. But Congress thus far has not seen fit to regulate it, and its silence, where it has the sole power to speak, is equivalent to a declaration that the particular commerce shall be free from regulation." *Missouri* v. *Kansas Gas Co.*, 265 U.S. 298, 307, 308; 44 S.Ct. 544.

The relation between the Agricultural Marketing Agreement Act and State regulation has been an issue in two cases, one involving raisins, the other milk. In *Parker* v. *Brown*, supra, the U. S. Supreme Court upheld the regulation of raisin prices paid California producers by California processors, partly because it "applied to trans-

[fol. 153] actions wholly intrastate" (see page 7 of this brief), and partly because of the following circumstances:

> "We have no occasion to decide whether the same conclusion would follow if the state program had not been adopted with the collaboration of officials of the the Department of Agriculture and aided by loans from the Commodity Credit Corporation recommended by the Secretary of Agriculture." (317 U.S. 358-9).

This reservation was pointed out by the Court in *Hood* v. *DuMond supra,* (336 U.S. p. 537).

In *Hood* v. *DuMond,* supra, New York had denied a license to establish a milk receiving plant for export to Massachusetts on the ground that issuance of the license would tend toward destructive competition in the market. The Court held, however, that the State could not require the license for interstate commerce. One of the bases for the Court's decision was the Agricultural Marketing Agreement Act. (See 336 U.S. pp. 541-5). The language is general, but the Court concluded as follows (p. 545):

> "These sections and reports indicate that it is the deliberate policy of Congress to prevent federal officers from placing barriers in the way of the interstate flow of milk. While a statutory prohibition against federal interference with certain phases of it may not always imply that the state too is precluded, it is obvious that a state limitation on export for the benefit of its own *own* consumers is not authorized by this Federal Act. The purpose as expressed in sec. 1, 7 U.S.C. sec. 601, is to avoid conditions which burden and obstruct the normal channels of interstate commerce. The order of the Commissioner avows itself to have the opposite effect. It can claim neither federal sponsorship nor congressional sanction."

In the instant situation, we have State regulation of retail prices asserted in the field of direct movements in interstate commerce, forbidden to the State for the reasons previously explained, and ouster of Federal regu-

lation by the producers with the obvious intention of substitution of the State regulation of interstate commerce. Certainly this situation is contrary to the principles above stated, if for no other reason than that State regulation is being used to frustrate Federal regulation of interstate commerce.

[fol. 154] II

*The State Milk Commission Has No Jurisdiction of Interstate Commerce by Reason of Section 3-381 of the Code of Virginia, 1950, but the Holding that the Commission has such Jurisdiction, if Upheld, would render the Regulation of the Milk and Cream Act of Virginia in Violation of the United States Constitution.*

The Milk and Cream Act of Virginia contains a "saving clause" on section 3-381 of the 1950 Code of Virginia, as follows:

> "No provision of this article shall apply or be construed to apply to foreign or interstate commerce, except in as far as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto."

This saving clause, and the limits of Virginia regulation of milk traffic in the Arlington-Alexandria Market area was the subject of decision of the U.S. Supreme Court in *Highland Farms Dairy* v. *Agnew*, 17 F. Supp. 575; affirmed 300 U.S. 608; 57 S.Ct. 549, 81 L.Ed. 835. The *Highland* case involved a suit to enjoin enforcement of the Virginia Milk and Cream Act and regulations of this Commission in the Arlington-Alexandria Milk Market. "One of the two plaintiffs (Highland Farms Dairy, Incorporated), which will be spoken of as 'Highland', has a cream--y for the pasteurizing and treatment of milk at Washington in the District of Columbia. For that purpose it buys milk from farmers in Virginia and Maryland. Its entire output of bottled milk it sells to the other plaintiff, Luther W. High, who has retail stores in Virginia and elsewhere for the sale of ice cream, milk and other dairy products." "The bottled milk distributed by High in Virginia is sold to him

BLEED THROUGH POOR COPY

in the District of Columbia but is delivered to his Virginia stores by the dairy trucks upon orders received by telephone." (17 F. Supp. 579.) The statute was attacked as in violation of the commerce clause of the U. S. Constitution.

[fol. 155] The following is quoted from the opinion of the 3-judge District Court:

> "Finally, the complainants say that the act and the regulations in pursuance thereof are invalid because they impose a burden on interstate commerce in violation of sections 8 and 10 of article 1 of the Federal Constitution. The argument rests, so far as section 8 is concerned, upon the interpretation of certain provisions of the act to mean that a distributor of milk in an area established by the Commission is forbidden to buy from a distributor located beyond the borders of the state unless the latter shall have first obtained a license from the Commission; and also that the distributor beyond the state, unless licensed, is forbidden to make such a sale; and that if the foreign distributor is licensed, he shall conform to the prices fixed by the Commission and shall comply with its rules and regulations and orders, subject to incurring the penalties prescribed by the act. This interpretation is based upon the definition of 'distributor' in section 1 of the act to include persons, wherever located or operating, whether within or without the Commonwealth of Virginia, and upon the provisions of section 4 that no distributor in a market in which the provisions of the act are in effect shall buy milk from producers or others for sale within the state, or sell milk within the state unless the distributor is duly licensed under the provisions of the act, and providing further, that it shall be unlawful for a distributor to buy milk from or sell milk to a distributor who is not licensed as required by the act.
>
> "If the act is given this meaning, it is doubtless invalid as a direct and unconstitutional burden on interstate commerce. In *Baldwin* v. *G.A.F. Seelig*, 294 U.S. 511; 55 S.Ct. 497, 79 L.Ed. 1032, 101 A.L.R.

55, the Supreme Court held that a law or regulation of the state of New York was invalid, as a violation of article 1, sec. 8, cl. 3 of the Constitution, which prohibited the sale of milk imported from another state unless the price paid therein to the producer was equal to the minimum prescribed by New York for purchases from local producers. We think that the act does not have the meaning attributed it, although the language of the sections under discussion give some support to the complainants' argument; for when the act is considered as a whole, including the admonition of section 14 that no provision of the act shall be construed to apply to foreign or interstate commerce except in so far as the same may be effective pursuant to the United States Constitution, it is seen that the act was not designed to apply to a distributor beyond the state either as to prices or licenses.

"Section 3 (j) of the act gives the Commission power to establish markets and to fix prices to be paid to producers by distributors, and wholesale and retail prices to be charged by distributors therein. The term 'market' means any city or town of the commonwealth or two or more cities and towns and the surrounding territory designated by the Commission as a natural marketing area. Obviously the area designated is to be confined by the Commission to a territory within the state of Virginia, and consequently the power of the Commission to fix prices in any market is to be enforced only within the state.

"Likewise, section 3 (k) provides that the Commission may require all distributors in any market designated by the Commission to be licensed by the Commission, so that here also the powers of the Commission are restricted to Virginia territory.

"Sections 1 (2) and 4 are broader in their literal sig- [fol. 156] nificance; but when it is borne in mind that the dairy in the instant case is not required by the act to be licensed or to sell at prices fixed by the Commission, since it is located in Washington and is not a distributor in any market designated by the

Commission, it is seen that the act does not forbid High from purchasing milk from the dairy in the District of Columbia, or fix the price which he shall there pay. . . ."

The opinion of the U.S. Supreme Court may be regarded as stronger than that of the District Court (300 U.S. 614-6):

"3. The statute does not lay a burden on interstate commerce.

"Argument to the contrary is built upon the definition of the word 'distributor' contained in sec. 1. We learn from that section that distributors include 'persons wherever located or operating, whether within or without the Commonwealth of Virginia, who purchase, market, or handle milk for resale as fluid milk in the Commonwealth of Virginia.' This definition, we are told, takes in the plaintiff Highland, who buys milk and sells it in interstate commerce, and does so with the expectation that upon arrival in Virginia the milk will be resold. But Highland is not subject to the provisions of the act, and so the Milk Commission has ruled. No matter what the definition of a distributor may be, sales are not affected by any restriction as to price unless made within the boundaries of a designated market area. The sections quoted in the margin point fairly to that conclusion. Highland in Washington may sell to High in Virginia, and High may buy from Highland, at any price they please. Not till the milk is resold in Virginia within a market area will the price minimum apply, and then only to the price to be charged on the resale. Cf. *Wiloil Corp.* v. *Pennsylvania*, 294 U.S. 169, 175; *Sonneborn Bros.* v. *Cureton*, 262 U.S. 506; *Baldwin* v. *G.A.F. Seelig, Inc.*, 294 U.S. 511. If there could be any doubt about this as a matter of construction, the doubt would be dispelled by the administrative practice and by the warning of the statute, expressed in sec. 14, that operations in interstate commerce shall not be deemed to be affected. So also as to the requirement of a license

expressed in sec. 4. High needs a license to the extent that he sells at retail to consumers in Virginia. Highland does not need one, and the Commission is not asking it to apply for one, because its business is now conducted with persons in interstate exclusively. Clumsy draftsmanship may have spread a fog about the section when viewed in isolation or taken from its setting. The fog scatters when we recall the provisions of sec. 14 and the administrative practice. Appellants' fears are visionary."

The sale and movement of milk from the District of Columbia directly to Arlington consumers is the same, so far as principle is involved, as the sale and transportation of milk by Highland to High, and the same interpretation of the same statute should result in the conclusion that the State Milk Commission has no authority or jurisdiction to regulate the movement.

[fol. 157] III

*The Court Erred in Holding that the Question at Issue in the Proceeding was Whether the Minimum Price Regulation is a Burden on Interstate Commerce; and Such Regulation is a Burden on Interstate Commerce.*

Emphasis of the trial court on whether regulation is a "burden" implies that the Court below followed the theory that a State may impose "reasonable" restrictions upon interstate commerce which would not be unduly burdensome. Such a theory of State power is erroneous, because the rule is not so broad. As the cases cited above show, there is a field of interstate commerce over which the States have no jurisdiction whatsoever. The Highland case itself shows that this is true with respect to milk price regulation in the Arlington area.

On the other hand, if regulation of the direct movement is considered a burden, ipso facto, then the Court also was wrong. The case of *Baldwin & Seelig*, 294 U.S. 511, 55 S.Ct. 497; 101 A.L.R. 55, 79 L.Ed. 1032, shows that the U.S. Supreme Court is of the view, affirmed later in the *Highland case*, that price regulation of milk moving across

State lines is in *itself* a burden on interstate commerce. The following are quotations from that case:

> "Nice distinctions have been made at times between direct and indirect burdens. They are irrelevant when the avowed purpose of the obstruction, as well as its necessary tendency, is to suppress or mitigate the consequences of competition between the States." (p. 522)
>
> "Commerce between the States is burdened unduly when one state regulates by indirection the prices to be paid to producers in another, in the faith that augmentation of prices will lift up the level of economic welfare, and that this will stimulate the observance of sanitary requirements in the preparation of the product." (p. 524)
>
> "It is one thing for a state to exact adherence by an importer to fitting standards of sanitation before the products of the farm or factory may be sold in its markets. It is a very different thing to establish a wage scale or scale of prices for use in other states, [fol. 158] and to bar the sale of the products, whether in original packages or in others, unless the scale has been observed." (p. 528)
>
> "What is ultimate is the principle that one state in its dealings with another may not place itself in a position of economic barrier against competition with the products of another state or the labor of its residents. Restrictions so contrived are an unreasonable clog upon the mobility of commerce. They set up what is equivalent to a rampart of customs duties designed to neutralize advantages belonging to the place of origin. They are thus hostile in conception as well as burdensome in result. The form of the packages in such circumstances is immaterial, whether they are original or broken. The importer must be free from imposts framed for the very purpose of suppressing competition from without and leading inescapably to the suppression so intended." (p. 527)
>
> "The statute here in controversy will not survive that test. A dealer in milk buys it in Vermont at

prices there prevailing. He brings it to New York, and is told he may not sell it if he removes it from the can and pours it into bottles. He may not do this for the reason that milk in Vermont is cheaper than milk in New York at the regimented prices, and New York is moved by the desire to protect her inhabitants from the cut prices and other consequences of Vermont competition. To overcome that competition a common incident of ownership—the privilege of sale in convenient receptacles—is denied to one who has bought in interstate commerce. He may not sell on any terms to any one, whether the orders were given in advance or came to him thereafter." (pp. 527-8)

Note how far the court went in the decision, in that the State was not permitted to extend the prohibition against sale even to the milk bottled in the State but still moving in interstate commerce.

[fol. 159] Conclusion

The questions of law raised in the Assignments of Error have never been passed upon by this Honorable Court. The questions involved have a public, as well as a private, importance, and it is submitted that the decision of the lower Court should be reviewed, not alone for the benefit of the complainant who has been aggrieved by the Order of the lower Court, but, also, for the future guidance of public authorities and private individuals in this Commonwealth.

In conclusion it is respectfully submitted that the lower Court has committed reversible error in not applying the proper legal principles to the facts in the case at bar.

For the foregoing reasons, your petitioner prays that an appeal or writ of error may be awarded your petitioner from the decree complained of.

Petitioner adopts this petition as his opening brief.

In conformity with Rule 9 of this court, it is stated that the appellant is the Arlington County Board, plaintiff below, and the appellee or parties of record who will be interested in sustaining decree of the court below, or

affected by a reversal thereof, is the State Milk Commission of Virginia, defendant below.

Your petitioner requests an oral presentation of the petition.

This petition will be filed with the Clerk of the Supreme Court of Appeals at Richmond, and a copy was mailed to the Attorney General of the Commonwealth of Virginia at Richmond, Virginia, opposing counsel in the court below, on the 18th day of November, 1952.

The County Board of Arlington County, Virginia,
(S.) Malcolm D. Miller, By Counsel, Malcolm D. Miller, Attorney, Munsey Bldg., Washington 4, D.C.

[fols. 160-162] Certificate

I, Malcolm D. Miller, an attorney practicing in the Supreme Court of Appeals of Virginia, do certify that in my opinion the decree complained of should be reviewed by said court.

(S.) Malcolm D. Miller, Attorney, Munsey Bldg., Washington 4, D.C.

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[fol. 163] In the Supreme Court of Appeals of Virginia

The County Board of Arlington County, Virginia, a body corporate, et al., Complainant,

v.

State Milk Commission, Respondent

Brief of State Milk Commission in Opposition to Petition for Appeal or Writ of Error—Filed November 28, 1952.

Addition to Summary of Facts and Proceedings in the Trial Court

Complainant has correctly stated some of the facts involved in this proceeding but has not stated the important material facts as they appear in the record upon which

the decision must be based. The respondent wishes to add to the statement of facts set out in the petition the following:

The record discloses that Chestnut Farms Dairy sold at wholesale and retail in this market 13.77% of its total sales and sold 33% of the total sales in this area. Chestnut Farms Dairy purchases milk from Virginia, Maryland, West Virginia and some from Pennsylvania. It purchased 46.09% of its total purchases in the State of Virginia. Chestnut Farms Dairy purchased from Virginia 53.45% of all the milk that was purchased in Virginia by all distributors in the Arlington-Alexandria and Manassas market area and the District of Columbia. 28.09% of all its Virginia purchases was sold by Chestnut Farms Dairy in this market area.

[fol. 164] The Virginia milk purchased by Chestnut Farms was processed, along with all other milk purchased, at its plant in the District of Columbia. The milk and other dairy products thus processed were loaded on trucks at its plant in the District of Columbia and sales were made from these trucks in this market area both at wholesale and at retail.

Chestnut Farms operates 15 or 20 truck routes in the Arlington market area. The drivers in charge of the trucks are in reality salesmen and solicitors. These men solicit from door to door and from store to store selling their product. They are paid on a commission basis with a guaranteed minimum salary. When the driver starts out with this truck in the morning he does not know the volume that he will sell that day. He sells to the stores whatever the store manager or store owner elects to buy that day. He usually makes his collections daily from the stores or restaurants and collects from the various doorstep deliveries weekly or monthly. It is the practice of the Chestnut Farms to keep additional trucks ready at the plant to supply the emergency sales made by the various truck driver-solicitors in excess of their truck loads. The driver 'phones in and meets his new supply at an appointed place and the driver-solicitor proceeds from there for his additional sale. True it is that the doorstep home

owner consumer is more regular in his purchases to the extent that there is usually a standing order for one or two quarts, etc., but even these are increased or entirely cut off from time to time by notes or memoranda at the doorstep. The driver solicitor leaves a bill at the doorstep and is paid at the doorstep and keeps his own book of account and records in his truck. It is true that there are some substantial number of individual consumers who send monthly checks direct to Chestnut Farms Dairy in Washington in payment of their milk bills. It is true also that Chestnut Farms Dairy does not have a processing plant or a receiving plant in the State of Virginia or in this market area. For all practical purposes the truck is the [fol. 165] store from which the sales are made and the driver is the solicitor, salesman and store clerk through whom the merchandise is sold and delivered to the consumer or customer and payment made therefor. Approximately 50% of the total milk sold by Chestnut Farms Dairy in this marketing area in Virginia is sold at wholesale and 50% at the doorstep.

In the year 1950 Chestnut Farms Dairy paid an income tax to the State of Virginia in the sum of $16,333.00 on business done in Virginia. In addition it paid for business and store licenses on the trucks the same being in the nature of peddlers licenses the sum of $6,762.00. Items in similar amounts have been paid for many years. The District of Columbia for many years through its taxing authority has recognized this volume of business as done in Virginia and has not taxed that volume as business done in the District of Columbia. The testimony indicates that Thompson's Dairy, the next largest dairy in this area, operates in the same fashion buying 55% of its total milk in Virginia and selling 23% of its total sales in this market area.

The Lucerne Milk Company which is a trade name for the milk division of Safeway Stores receives its milk from shippers in Maryland and Virginia through the Maryland and Virginia Milk Producers' Association at its plant in the District of Columbia. The milk is processed there and packaged. Safeway transports milk from its District plant to its Virginia stores. It sold in this market area

17.09% of its total milk sales in the metropolitan Washington area. It sold 10½% of all Virginia sales and purchased from Virginia producers 15.03% of its total purchases of milk. Its Virginia sales amounted to 116% of its Virginia purchases. Safeway has no milk routes in Virginia but distributes all of its dairy products direct to retail customers coming to its stores. Safeway operates its trucks that deliver the milk from the Washington processing plant to its various stores in Virginia on the same commission basis for the truck driver as route sales-[fol. 166] men and wholesale drivers of other distributors. All of these truck driver salesmen are in the same Union and are employed under the same Union contract as is applicable to the entire milk distributing industry in this area.

Chestnut Farms Chevy Chase Dairy, Thompson's Dairy, Lucerne Milk Commission and the Milk Division of Safeway Stores are the principal distributors who offered testimony in this proceeding. They raised no question of the right of respondent to fix minimum prices nor did they or do they contend that the fixing of a minimum sales price is a burden on them or on interstate commerce.

*Questions Involved*

Counsel for complainant, Arlington County, argues that the questions involved in this proceeding are:

(a) The authority of the State Milk Commission to regulate the sale price of fluid milk sold and delivered to consumers from trucks of District of Columbia distributors.

(b) Whether or not the fixing of a minimum sale price on fluid milk sold and delivered to consumers in the Arlington County market area is to be determined by the degree of "burden" placed upon interstate commerce.

It is the contention of respondent that there is no question but that the State of Virginia can and has authorized the Milk Commission to regulate the sale price of milk sold under these circumstances and that such a regulation does not place a burden upon interstate commerce.

Further it is the contention of respondent that the sales

in question are Virginia transactions and not transactions in interstate commerce; that even if they were in interstate commerce the fixing of minimum prices is not a burden on interstate commerce; and even if it were the burden is not undue and is still within police power of the state to protect its milk industry in the state by such regulations.

[fol. 167] ***The Sale of Milk by Chestnut Farms Dairy in the Arlington Market Area Is Local and Is Subject to the Control of the Act.***

From the aforegoing facts it is obvious that all the sales of Chestnut Farms Dairy are local in Virginia, whether made to wholesale or retail customers. It is interesting to observe that while counsel for the Arlington County Board of Commissioners could have contended and did originally contend that both types of sales were in Interstate Commerce, he has in his latest memorandum not done so with respect to wholesale sales. He now confines his thesis to the contention that the transportation and sale from trucks of distributors in the District of Columbia to door steps of *consumers* in Arlington is in Interstate Commerce and therefore the Virginia Milk Commission has no authority to fix a minimum resale price therefor. Just why sales by distributors to wholesalers should not be in Interstate Commerce while sales to consumers under identical same circumstances should be in Interstate Commerce is not clear. Counsel gives no explanation for the alleged difference.

On this point it would seem that the case of *Wagner* vs. *Covington* 251 U. S. 101, should be more than controlling. Plaintiffs, manufacturers of soft drinks in Cincinnati, Ohio, sold in Covington, Kentucky, from their vehicle to various purchasers such soft drinks as the purchasers might need from time to time. The trucks carried sufficient drinks to meet the probable demands of customers but with the exception of occasional small amounts carried for delivery in response to particular orders previously received at plaintiffs' plant of business in Cincinnati, all of the sales in Covington were made from the vehicle by the driver. Sometimes the driver sold his entire supply

or only a part of it. The sales were made in the bottles as filled in Ohio. The driver collected cash from time to time from his customers. The statement of facts in this case are almost identical with the testimony in the case at bar. In upholding the right of the City of Covington to tax the plaintiff and to recover license fees from them under cer- [fol. 168] tain city ordinances the Court said:

> "If in respect to this portion of their business, plaintiffs may be subjected to the regulatory power of the state acting through the municipality, we are not concerned with the question whether the general language of the ordinances, if applied with respect to some other method of dealing with goods brought from state to state might be repugnant to the Federal Constitution.
>
> "From the facts recited it is evident that, in essence, that part of plaintiffs' business which is subjected to regulation is the business of itinerant vendor or peddler,—a travelling from place to place within the state, selling goods that are carried about with the seller for the purpose. * * *
>
> "Of course, the transportation of plaintiffs' goods across the state line is of itself Interstate Commerce; but it is not this that is taxed by the City of Covington, nor is such Commerce a part of the business that is taxed, or anything more than a preparation for *goods might just as well been manufactured within* it. *So far as the itinerant vending is concerned, the the State of Kentucky;* to the extent that plaintiffs dispose of their goods in that kind of sales, they made them the subject of local commerce, and this being so, they can claim no immunity from local regulation, whether the goods remain in original packages or not."

Apropos of the emphasis supplied above, it might be observed that this Chestnut Farms Dairy milk was bought from Virginia producers in excess of the amounts so sold in Virginia.

The case of *Caskey Baking Company, Inc.* vs. *Commonwealth of Virginia,* 313 U. S. 117, decides the same ques-

tion with respect to bread brought from West Virginia bakeries and sold in the State of Virginia.

It must be remembered that in the record before this Commission the Chestnut Farms Dairy takes out a peddlers or store license on every one of its trucks that operates these truck routes in Virginia and paid in such license fees on those trucks a sum in excess of $6,000.00 in the year 1950. How then could Chestnut Farms Dairy contend in one breath that it was engaged in retail selling from trucks licensed under store licenses and in the next moment contend that it was engaged in Interstate Commerce as to that milk so sold. Chestnut Farms Dairy pays to Arlington County and to Alexandria County each $150.00 peddlers (or store) license fee per year per truck. [fol. 169] *Does it not seem to be the height of inconsistency for Arlington County to contend that it is collecting those license fees illegally by arguing that these trucks are engaged in selling in Interstate Commerce.*

*Does the Processing and Bottling of Virginia Milk Outside of Virginia for Sale and Delivery in Virginia Create Interstate Commerce.*

Chestnut Farms purchased from Virginia Producers 46% of its total milk supply. It sold in Virginia 28.09% of its Virginia purchases. It must be obvious that Chestnut Farms merely processes in bottles in the District of Columbia about half of its Virginia purchases and returns the milk to Virginia for sale. Suppose that Alexandria Dairy, a dairy under the jurisdiction of respondent, which purchases all its milk from Virginia producers and sells all of its milk in Virginia, merely transported from a receiving station in Virginia a substantial portion of its milk supply to a processing and bottling plant in the District of Columbia and returned it in its own trucks to Virginia, could it then be contended that Alexandria Dairy is engaged in Interstate Commerce and would not be bound by the minimum price provision. Could it be argued for a moment, that by so doing, Alexandria Dairy could relieve itself of its obligations to comply with the Virginia milk statute and the decisions of this Commission? To ask the question is to answer it. Obvi-

ously it could not. It is difficult to see how Chestnut Farms or any other distributor can avoid the jurisdiction of the Milk Commission in view of the foregoing statistics.

### *What of Highland Farms Dairy* vs. *Agnew* *300 U. S. 608?*

Counsel for the Arlington County Board seems to ignore almost entirely the real meaning of the decision of the United States Supreme Court in *Highland Farms Dairy* vs. *Agnew*, 300 U. S. 608, in which decision the Court upheld in toto the Milk Commission Act of Virginia, the same be-[fol. 170] ing Chapter 17 Article 2 Code of Virginia. This Act is almost identical, certainly so far as the fixing of minimum and maximum resale prices is concerned, with the Acts of New York, Pennsylvania and various other forward looking States, all of which have been sustained by the Supreme Court of the United States and will be referred to later.

The Act creating the Milk Commission for Virginia defines "distributor" with an additional definition than that referred to in the Agnew case as follows:

> "Distributor means any of the following persons engaged in the business of distributing, marketing *or in any manner handling fluid milk*, in whole or in part in fluid form for consumption in this State:
>
> I. Persons, irrespective of whether any such person is a producer:
>
> (a) who pasteurize or bottle milk or processed milk into fluid milk.
>
> (b) who sell or market fluid milk at wholesale or retail,
>
> (1) to hotels, restaurants, stores or other establishments for consumption on the premises,
>
> (2) to stores or other establishments for resale,
>
> (3) to *consumers.*"

The Act then provides that distributors shall be licensed. These D. C. distributors are so licensed. The Act then provides that maximum and minimum prices are to be fixed

by the Commission with which all distributors must comply.

In *considering this statute the Supreme Court* of the United States in affirming the District Court of the United States for the Eastern District of Virginia in 300 U. S. 614 said:

> "The Statute does not lay a burden on interstate commerce."

[fol. 171] The contention made by appellants as to the meaning of the word "distributor" in that case is then answered. The definition of the word distributor discussed in the opinion is the second paragraph of the definition and not the one cited above. In the *Agnew* case it was agreed that Highland in the District of Columbia bought milk and sold in interstate commerce. He sold it to a man by the name of High who resold it in Virginia and thus became a distributor. The Court very appropriately said:

> "Highland in Washington may sell to High in Virginia and High may buy from Highland at any price they please. Not till the milk is resold in Virginia within a market area will the price minimum apply, and then only to the price to be charged on resale (the Court citing among other cases, *Baldwin* vs. *G.A.F. Seelig*, 294 U.S. 511, which will be referred to later)."

Counsel in his memorandum before the lower Court then comments on this decision as follows:

> "There is no essential difference between Highland and High and between the Thompson Dairy (likewise Chestnut Farms) and the writer of this brief who receives their milk at his doorstep."

The writer is completely in error. The writer of the brief is a consumer. High in the *Agnew* case was a distributor. Highland was admittedly in interstate commerce. The purchase and sale was by High, a distributor, from Highland also a distributor in the District of Columbia. The more apt comparison the writer could have made would

have been to have compared the *Agnew* case to Safeway, which purchases and processes its milk in the District of Columbia as the Lucerne Milk Company and delivers and sells its milk through its stores in Virginia. Counsel seems to concede that Safeway's operation comes within the Virginia Statute.

The *Agnew* opinion then goes on to say at page 614 and 615:

> "No matter what the definition of a distributor may be, sales are not affected by any restriction as to price unless made within the boundaries of a designated market area."

Why is it that counsel concedes that sales made by Chestnut Farms and Thompson's trucks to stores and restaurants (which trucks carry a peddler's or store licenses) [fol. 172] are within the jurisdiction of the Commission, but sales made from the same trucks to consumers are not within its jurisdiction? The evidence shows that the sales are made under identically the same conditions. Certainly milk delivered to a restaurant in fluid form is delivered "for consumption" in the State. Is there any difference between the consumer on the doorstep and the consumer in the restaurant? Of course, a restaurant too is a consumer as well.

Counsel in his petition and memorandum seems to have overlooked entirely the decision of the highest Court of the State of Virginia upholding the price fixing provision of this Act. In *Reynolds* vs. *Milk Commission*, 163 Virginia 957, the Supreme Court of Appeals passed upon the validity of this statute in a case in which it was sought to enjoin the distributors from selling milk at a price lower than the prescribed minimum. Commenting upon that decision the Supreme Court said in the *Agnew* case page 613 "*a judgment by the highest Court of a State as to the meaning and effect of its own constitution is decisive and controlling everywhere*".

The decision of the Supreme Court of the United States in the case of *Nebbia* vs. *New York*, 291 U. S. 502-559 sustaining the New York Milk Law on all constitutional points

in 1933 would seem to be a total and complete answer to the contention of counsel in his memorandum. The New York law was promulgated by the Legislature of New York after a long investigation into the industry from every standpoint. The entire question of its constitutionality so far as the police power of the State to control the industry was concerned, the production and importation of milk into the State of New York, the fixing of minimum prices was squarely presented.

It is impossible in this memorandum to quote the various paragraphs in the *Nebbia* case that completely answer counsel's contention. The New York Milk Act was the forerunner of all similar Milk Control Acts thereafter passed in many of the Eastern States. Every constitu- [fol. 173] tional objection including the interstate commerce question was raised in that case. That Act provided for minimum resale prices of which complaint is made here. In one sentence 291 U.S. at page 537 the Supreme Court of the United States completely answer counsel's contention:

> "But there can be no doubt that upon appropriate action and by appropriate measures the State may regulate a business in any of its aspects including the prices to be charged for the products or commodities it sells." * * *
>
> Page 538
>
> "Where the public interest was deemed to require the fixing of minimum prices that expedient has been sustained. If the lawmaking body within its sphere of government concludes that the conditions or practices in an industry make unrestricted competition an inadequate safeguard of the consumers' interests, produce waste harmful to the public, threaten ultimately to cut off the supply of a commodity needed by the public, or portent the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the legislature to be fair to those engaged in the industry and to the consuming public.

> And this is especially so where, as here, the economic maladjustment is one of price, which threatens harm to the producer at one end of the series and the consumer at the other. The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people. Price control, like any other form of regulation, *is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt,* and hence an unnecessary and unwarranted interference with individual liberty."

The *Nebbia* case holds that it is within the police power of a state to protect its milk industry from price-cutting and evil trade practices in order that producers, distributors and consumers might have an adequate supply of wholesome milk at a price that will insure continued and adequate production. The action of the Milk Board in fixing a minimum retail price for all milk is in no way [fol. 174] discriminatory or irrelevant to the policy of such legislation. If so-called "interstate commerce milk" could be brought in from other states and sold on a cut-price basis in Virginia, the state would soon become a dumping ground for surplus milk at various seasons, the whole price structure would be destroyed and the legislature of Virginia would be wholly unable to protect the very industry that the *Nebbia* case says it has a right to protect.

Mr. Justice Jackson of the Supreme Court of the United States in the majority opinion in *Hood* vs. *DuMond,* 336 U.S. 529 referring to the *Nebbia* case says:

> "Production and distribution of milk are so intimately related to public health and welfare that the need for regulation to protect those interests has long been recognized and is, from a Constitutional standpoint hardly controversial. Also the economy of the industry is so eccentric that economic controls have been found at once necessary and difficult. These have involved, detailed, intricate and comprehensive regulations, including price fixing."

*The Fixing of Minimum Sale Prices Is Not a Burden on Interstate Commerce Because not Undue or Discriminatory.*

In the memorandum of counsel there are cited many cases that are entirely appropriate in their setting but many of them state principles with respect to so-called regulations of interstate commerce that have long since been outmoded. Many of the cases on the subject have used the words, "restraints", "obstructions", "in commerce", "on commerce", "burdens", "direct burdens", "undue burdens", "unreasonable burdens", "unfair burdens", "incidental burdens", but such words have almost always been used as the opinions show to aid the Court in trying to balance the right of a State to regulate a business such as the milk industry under its police power and at the same time not to discriminate against interstate commerce in that same industry. *There is no question but that a State may appropriately place some burden* [fol. 175] *upon interstate commerce.* There is no case in the books which is a better illustration of this fact than the Supreme Court decision in *Milk Control Board* vs. *Eisenberg Farm Products,* 306 U.S. 349-351.

In that case the Pennsylvania Milk Control Law required a State license of all persons who handled or purchased milk within the Commonwealth for sale *within or without* the Commonwealth. It required all dealers, interstate and intrastate, to keep records and to give bonds for payment to producers. Dealers who sold milk within or without the State were required to pay state-fixed prices. The purpose was the protection of milk farmers in Pennsylvania from what were deemed to be the evils of cutthroat competition. The law was applied against Eisenberg who handled and operated a milk receiving plant in Pennsylvania where the milk was weighed, tested and cooled preparatory to shipment to New York. Unquestionably Eisenberg was engaged in interstate commerce. *Without doubt the requirements imposed upon Eisenberg were not only burdens but very great and substantial burdens. What greater burden could there be upon him than that he should pay for his purchase a price fixed by the*

*State.* Certainly there was no free right of purchase and sale and no bargaining.

*In passing one must wonder how counsel can distinguish between the right of the State to fix a universal purchase price in local and interstate commerce and the fixing of a universal minimum sale price for the same kind of commerce.*

In upholding the legality of the Pennsylvania Statute the Supreme Court of the United States in 306 U.S. at page 350 said,

> "The Respondent contends that the Act, if construed to require it to obtain a license, to file a bond for the protection of producers, and to pay the farmers the price prescribed by the Board, unconstitutionally regulates and burdens interstate commerce. The State Supreme Court has held that the Statute is a valid police regulation. The Petitioner concedes that the purchase, shipment into another State, and sale there of the milk in which the Respondent deals, is [fol. 176] interstate commerce. The question for decision is whether, in the absence of Federal Regulation the enforcement of the Statute is prohibited by Article I, paragraph 8 of the Constitution. *We hold that it is not.* * * *
>
> "Every State Police Statute necessarily will affect interstate commerce in some degree, but such a Statute does not run counter to the grant of Congressional power merely because it incidentally or indirectly involves or burdens interstate commerce."

Only by a complete reading of the entire opinion can one gauge the full meaning thereof. The opinion, however, justifies the argument that States can impose burdens in interstate commerce, particularly where such burdens are not discriminatory, and where, as the Court said in the Eisenberg case *"the activity affected by the regulation is essentially local"*. The Eisenberg case may not be dismissed as simply as counsel seeks to do in his memorandum. It would seem to be more than controlling here.

We are not alone in this comment with respect to the Eisenberg case. Mr. Justice Black of the Supreme Court

in his dissent in the case of *Hood* vs. *DuMond*, 336 U.S. 558 commented on the Eisenberg case as follows,

> "The Eisenberg case thus sustained the power of a State to require licenses from interstate dealers and to impose conditions on their interstate commerce transactions in order to *effectuate legitimate State policy*. And the conditions Pennsylvania imposed were burdensome, as this Court recognized they erected obstacles which were bound to limit the number of interstate dealers. * * *
>
> "Pennsylvania imposed these burdens on interstate commerce to promote health and to protect its farmers from the consequences of destructive competition among dealers."

Counsel for Arlington County seems to rely very heavily upon the ideas expressed in the case of *Baldwin* vs. *Seelig*, 294 U.S. 511-528. This case when studied and analyzed is so different from the case at bar that one cannot help but wonder why it was referred to at all. It establishes principles which decide the contention of counsel against him. The crucial facts of that case are as follows:

The New York law fixes a minimum price for milk bought [fol. 177] by New York dealers from New York farmers. Vermont's legislative policy left milk dealers free to fix milk prices by bargaining. Seelig, a New York dealer, sold milk in New York which had been bought from Vermont farmers at prices below that fixed for New York farmers by New York law. The New York Milk Control Act with the aid of regulations made thereunder set up a system of minimum prices to be paid by dealers to producers. The Act had a provision whereby the protective prices to be paid to New York farmers were extended to that part of the supply which comes from other States. It provided that there should be no sale within New York of milk bought outside the State unless the price paid to the purchasers was one that would be lawful upon a like transaction within the State. The Supreme Court of the United States in holding that the Milk Control Act was invalid to this extent said,

"New York has no power to project its legislation into Vermont by regulating the price to be paid in that State for milk acquired there. New York is equally without power to prohibit the introduction within her territory of milk of wholesome quality acquired in Vermont, whether at high prices or at low ones. Accepting these postulates New York asserts her power to outlaw milk so introduced by prohibiting its sale thereafter if the price that has been paid for it to the farmers of Vermont is less than would be owing in like circumstances to farmers in New York. The importer in that view may keep his milk or drink it, but sell it he may not.

"Such a power, if exerted, will set a barrier to traffic between one State and another as effective as if customs duties, equal to the price differential, had been laid upon the thing transported."

The real meaning of *Baldwin* vs. *Seelig* is again found in Mr. Justice Black's dissent in *Hood* vs. *DuMond*, 336 U.S. 556 as follows,

"Even though the Court regarded the Baldwin vs. Seelig law as discriminatory, other considerations were added to weight the scales on the side of invalidation. Its impact on Vermont economy and Vermont legislative power was weighed. To whatever extent it is desirable to reform the economic standards of Vermont, "the legislature of Vermont and not that of New York must supply the fitting remedy." • • •

"Added to this was the Court's appraisal of the law *as a plain discrimination against interstate commerce* [fol. 178] *that would inescapably erect a barrier* to suppress competitive sales of Vermont milk in New York, thus leading to retaliatory "rivalries and reprisals," at page 522."

It must be remembered that in the case at bar Virginia has not attempted to regulate the price of milk in the District of Columbia or the manner in which it is distributed there. It has not attempted to put pressure on the District of Columbia (Chestnut Farms Dairy and others

similarly situated) to reform economic standards; its law is not hostile to interstate commerce in conception or operation; *its purpose in fixing minimum resale prices is to conserve health and promote economic stability among Virginia producers.* The Virginia minimum price requirement fairly administered to all distributors as it has been is not the kind that breeds rivalries and reprisals.

Counsel in his memorandum cites the case of *Hood* vs. *DuMond,* 336 U.S. 525-576. This case is no authority for counsel's contention. In that case Hood and Sons, a Massachusetts corporation, distributed its milk products in Boston acquiring the bulk thereof outside of Massachusetts. Two receiving stations were owned in New York State near Troy. Hood wished a permit from the New York Milk Commission for another receiving station. The station would be nearer some producers already shipping to one of Hood's stations and would also attract a number of producers who would be diverted from other buyers. Permit was denied primarily on the ground that if Hood took producers delivering milk to the local markets such as Troy, it would deprive those markets of an adequate supply especially during the short season. The Supreme Court denied the right of the Milk Commission of New York to refuse Hood an additional permit on the ground that it was a discrimination against Interstate Commerce and that the state had no right to totally prohibit the right of Hood to purchase from additional producers in New York State merely because the milk would be transported to Boston in Interstate Commerce.

[fol. 179] This case is wholly different from the one at bar and is different also from the case of Baldwin against Seelig 294 U.S. 511 quoted above. In the Seelig case the exporter was not prohibited from acquiring new stations, or new producers. He merely was required to be treated and to treat others on an equal basis. In the Hood case, Hood was denied any access to a new market in New York because of his interstate activities.

Be it noted that the application of the minimum sale price in Virginia is equal and universal as to all milk received by wholesaler, retailer or consumer in their respective classifications in Virginia. There is no discrimination;

there is no exclusion or limitation; there is no ground or basis for retaliation; the market is open to all alike.

Some quotations from Mr. Justice Jackson's opinion in the case of *Hood* vs. *DuMond* are in order:

> Page 530.
> "It is only additional restrictions, imposed for the avowed purpose and with the practical effect of curtailing the *volume* of interstate commerce to aid local economic interests, that are in question here, and no such measures were attempted or such ends sought to be served in the Act before the Court in the Eisenberg Case."

Referring to the Seelig Case:

> "In that case, New York placed conditions and limitations on the local sale of milk imported from Vermont designed in practical effect to *exclude* it, while here its order proposes to limit the local facilities for purchase of additional milk so as to withhold milk from export. The State agreed then, as now, that the Commerce Clause prohibits it from *directly curtailing movement* of milk into or out of the State."

Referring to various decisions in the Supreme Court on the milk industry, Mr. Justice Jackson at page 531 said of the Court:

> "It recognized, as do we, broad power in the State to protect its inhabitants against perils to health or safety, fraudulent traders and highway hazards, even by use of measures which bear adversely upon interstate commerce. But it laid repeated emphasis [fol. 180] upon the principle *that the State may not promote its own economic advantages by curtailment or burdening of* interstate commerce."

The test repeatedly applied by Mr. Justice Jackson in this case is that a state may not retard, burden or constrict the flow of interstate commerce *for its economic advantage,* and may not place itself in a position of economic isolation. Finally, the Court at page 539 lays

down the principle that would seem to apply in all such cases and ought to be a complete answer to counsel's contention in the case at bar.

> "Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his export, and no foreign state will by customs, duties, or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any."

*State Minimum Price Laws Must Be Obeyed by the United States Government*

We cite with some interest the case of *Milk Control Board* vs. *Goselin's Dairy* (1938) 16 N.E. (2nd) 641 where it was held that prices established by order of a Milk Control Board by virtue of a statute empowering such Board to fix prices were applicable to contracts made for the sale of milk to the United States Government for delivery at a Veteran's hospital within the state. Obviously, all that was done was merely to deliver the milk to a Government hospital within the state. In holding that the Act was applicable in so far as minimum prices were concerned the Court said:

> "The purpose is obviously to control in its entirety the business of selling milk within the commonwealth. Any discrimination between sales in this commonwealth to residents and sales to non-residents such as visitors or foreign corporations doing business here would be wholly artificial and unrelated to the objects of the act, and would open the door to evasions which would tend to defeat its purposes."

[fol. 181] A similar decision in even stronger language is to be found in *Patterson Milk and Cream* vs. *Milk Control Board,* 118 N. J. L. 383. A milk dealer's license was revoked because he sold milk to the United States Govern-

ment at prices below those fixed by the state Milk Control Board in New Jersey.

It will be seen from these cases that the United States engaged in interstate commerce, having sovereign control of interstate commerce must obey a state's minimum price law. How much more must it be true that an individual business similarly situated must do so.

*Conclusion*

Counsel for the County Board in his paragraph marked "Conclusion" says "The questions of law raised in the Assignments of Error have never been passed upon by this Honorable Court." It is difficult to understand how counsel can make such a statement in the face of the fact that this Court decided the case of *Reynolds* v. *The Milk Commission*, 163 Va. 957 and in the decision also of this Court in *Highland Farms Dairy* vs. *Agnew*, 300 U.S. 608, affirming a decision of this Court. Contrary to the statement of counsel all of the questions that he raises have been decided by the Supreme Court of the United States and the highest Courts in Virginia, New York, Pennsylvania, Massachusetts and in almost every other state where the marketing of milk has become such a serious problem to our economy.

Increasing economic complexities, greater demands for governmental supervision, keener competition and the increasing exercise of the latent power of the legislature in reference to industries and conditions that safeguard the public interest has made it clear that the old guideposts of earlier decisions with respect to burdens or interferences with interstate commerce have been repainted and their direction has been changed. Especially has this [fol. 182] been true in the milk industry starting with the celebrated case of *Nebbia* vs. *New York*, 291 U.S. 502. The inherent police power of a state has few fixed limitations. Even those limitations will expand to meet the actual requirements of an advancing civilization and adjust themselves to the necessities of our multiplying complexities in our economic life. The acid test between the Interstate Commerce Clause and State Regulation by virtue of its

police power is whether or not there is discrimination, exclusion or basis for retaliation. The Virginia minimum price regulation applied equally to all under such circumstances is not a burden or even a hindrance to interstate commerce.

Respectfully submitted, (S.) J. Lindsay Almond, Jr., Attorney General of the Commonwealth of Virginia, Thomas M. Miller, Assistant Attorney General, Roger J. Whiteford, Special Assistant to the Attorney General.

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Certificate of Service (omitted in printing).

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[fol. 183] IN THE SUPREME COURT OF APPEALS IN THE CITY OF RICHMOND

The Court-Library Building

ORDER REFUSING APPEAL—January 26, 1953

The petition of The County Board of Arlington County, Virginia, for an appeal from a decree entered by the Circuit Court of the City of Richmond on the 22nd day of July, 1952, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and State Milk Commission was defendant, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that the said decree is plainly right, doth reject said petition and refuse said appeal, the effect of which is to affirm the decree of the said circuit court.

Clerk.

[fol. 184] IN THE SUPREME COURT OF APPEALS IN THE CITY OF RICHMOND

Supreme Court of Appeals Building

[Title omitted]

ORDER REFUSING TO ALLOW AN APPEAL TO THE SUPREME COURT OF THE UNITED STATES—April 21, 1953

The petition of The County Board of Arlington County for an appeal to the Supreme Court of the United States from an order entered by this court on the 26th day of January, 1953, in a certain cause then therein depending wherein the said petitioner was appellant and the State Milk Commission was appellee, having been maturely considered, the court doth reject said petition and refuse said appeal to the Supreme Court of the United States.

Clerk.

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[fol. 185] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF APPEAL—April 22, 1953

To: The State Milk Commission of the Commonwealth of Virginia, represented by The Attorney General of the Commonwealth of Virginia.

Please take notice that, pursuant to the statutes and rules of Court in such case made and provided, the above-named complainant-appellant, the Arlington County Board does hereby appeal to the Supreme Court of the United States from the final order and judgment of the Supreme Court of Appeals of the Commonwealth of Virginia, made and entered on January 26, 1953, which affirmed the decree of the Circuit Court of the City of Richmond, Virginia, entered on July 22, 1952, and held that said decree was "plainly right" that "the State Milk Commission can legally fix the minimum sale price of

fluid milk sold and delivered to consumers in the Arlington-Alexandria Market Area from trucks of the District of Columbia distributors and that Arlin-ton-Alexandria Market Order No. 4 should be sustained"; and "that the minimum price regulation in question is not a burden on interstate commerce."

For The Arlington County Board, Appellant, (S.) Malcolm D. Miller, Attorney, Munsey Building, Washington 4, D. C.

Dated: April 22, 1953.

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[fol. 186] In the Supreme Court of the United States

[Title omitted]

Petition for Appeal—April 22, 1953

To: The Honorable Supreme Court of the United States:

The above-named complainant-appellant, the Arlington County Board, a body corporate which is the governing body of Arlington County, Virginia, considering it aggrieved by the final decree and judgment of the Supreme Court of Appeals of the Commonwealth of Virginia, entered on January 26, 1953, does hereby pray that an appeal be allowed to the Supreme Court of the United States from said final decree and judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said complainant-appellant; and that a transcript of the record, proceedings, and papers (or so far as the Court may direct, the original record in lieu of such transcript) upon which said decree is based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such cases provided.

On April 20, 1953, the undersigned presented a like petition for appeal to the Chief Justice of the Supreme Court of Appeals of Virginia, but allowance of appeal was re-

fused by that Court. Therefore the petition is respectfully submitted to the Supreme Court of the United States.

Respectfully submitted, For The Arlington County Board, Complainant-Appellant, By (S.) Malcolm D. Miller, Attorney, Munsey Building, Washington 4, D. C.

Dated: April 22, 1953.

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[fol. 187] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—April 23, 1953

The Arlington County Board, having made and filed its petition praying for an appeal to the Supreme Court of the United States from the final decree and judgment of the Supreme Court of Appeals of the Commonwealth of Virginia in this cause entered on January 26, 1953, and from each and every part thereof, and having presented their assignment of errors and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of $250.00 with good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that citation shall issue in accordance with law.

(S.) Fred M. Vinson, Chief Justice.

Dated: April 23, 1953.

[fol. 188] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—
April 22, 1953

The Arlington County Board, complainant-appellant in the above-entitled cause, in connection with its appeal to the Supreme Court of the United States, hereby files the following assignment of errors upon which it will rely in its prosecution of said appeal from the final judgment of the Supreme Court of Appeals of Virginia entered on January 26, 1953.

The Supreme Court of Appeals of Virginia erred:

1. In affirming the decree of the Court below entered on July 22, 1952, by the Circuit Court of the City of Richmond, Virginia, and in refusing an appeal from such decree by which the said Circuit Court upheld the validity of an order of the State Milk Commission of the Commonwealth of Virginia increasing prices of milk in Arlington-Alexandria Market Order No. 4 which was the subject of that proceeding.

2. In holding that the said Circuit Court was "plainly right" in its decree and in its letter-opinion under date of June 20, 1952, in which the said Circuit Court held "that the State Milk Commission can legally fix the minimum sale price of fluid milk sold and delivered to consumers in the Arlington-Alexandria Market Area from trucks of the District of Columbia distributors and that Arlington-Alexandria Market Order No. 4 should be sustained."

3. In holding that the said Circuit Court was "plainly right" in said decree and in said opinion in which the Circuit Court held "that the minimum price regulation in question is not a burden on interstate commerce."

[fol. 189] 4. In failing to grant an appeal and hold that the said order of the State Milk Commission was in violation of the Commerce Clause of the United States Constitution (Article 1, Section 8, Clause 3); and, hence that said order of the State Milk Commission was beyond its jurisdiction.

5. In failing to grant an appeal and hold that the field of milk price regulation in the Arlington-Alexandria Market Area, under said Commerce Clause of the United States Constitution, had been occupied by the United States Government under an Act of Congress (7 U. S. Code, sec. 601 et seq. particularly section 608 (c)) to the exclusion of regulatory jurisdiction by the State Milk Commission of the Commonwealth of Virginia in said area.

Wherefore, complainant-appellant, the Arlington County Board, prays that the final decree of the Supreme Court of Appeals of the Commonwealth of Virginia be reversed, and for such other relief as the Court may deem fit and proper.

For The Arlington County Board, Complainant-Appellant, (S.) Malcolm D. Miller, Attorney, Munsey Building, Washington 4, D. C.

Dated: April 22, 1953.

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[fol. 190] Citation in usual form showing service omitted in printing.

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[fol. 191] Statement required by Paragraph 2 Rule 12 of the Rules of the Supreme Court (omitted in printing).

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[fols. 192-198] Praecipe (omitted in printing).

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[fol. 199] Clerk's Certificate to foregoing transcript omitted in printing.

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Judge's certificate to clerk (omitted in printing).

[fols. 200-202] IN THE SUPREME COURT OF THE UNITED STATES

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate, ET ALS., Appellant,

v.

STATE MILK COMMISSION, Appellee

APPELLANT'S STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—filed June 16, 1953.

1. Appellant adopts for its statement of points upon which it intends to rely in its appeal to this Court the points contained in its Assignment of errors heretofore filed.

2. Appellant designates the entire record, as filed in the above-entitled case, for printing by the Clerk of this Court.

(S.) Malcolm D. Miller, Attorney for Appellant, Munsey Building, Washington 4, D.C.

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Certificate of Service (omitted in printing).

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(File endorsement omitted.)

[fol. 203] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 128

ORDER NOTING PROBABLE JURISDICTION—October 12, 1953

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is transferred to the summary docket and assigned for argument immediately following No. 115, Kern-Limerick, Inc., et al. vs. Parker, Commissioner of Revenue.

The Chief Justice took no part in the consideration or decison of this question.